TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 25

VALVOLINE OIL COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FILED MARCH 30, 1939.

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[fol. 1] [File endorsement omitted]

[fol. 2]

IN UNITED STATES CIRCUIT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity

No. 3421

VALVOLINE OIL COMPANY, Petitioner,

vs.

THE UNITED STATES OF AMERICA, Respondent.

PETITION—Filed August 5, 1938

To the Honorable Judges of the District Court of the United States for the Western District of Pennsylvania:

The Valvoline Oil Company, hereinafter generally referred to as the Petitioner, files this its petition against the United States of America and more particularly to enjoin, set aside, suspend and annul a certain order hereinafter [fol. 3] set forth of the Interstate Commerce Commission, hereinafter called the Commission, and in support of its prayer for injunctive relief, the Petitioner complains and says:

I

The Petitioner is a corporation organized and existing under the laws of the State of New Jersey, having its principal office in the City of Cincinnati, Ohio, and operating an oil refinery and branch office at Butler, Pennsylvania; that in connection with its refinery and in order to secure a supply of selected crude oil for manufacturing purposes, the Petitioner operates a system of gathering lines or pipe lines extending to its refinery at Butler, Pennsylvania, from points in Western Pennsylvania, West Virginia and Southeastern Ohio, and is engaged in the gathering of crude oil, the refining of the same and the manufacturing of high grade lubricating oil and the marketing thereof.

[fol. 4] II

The petitioner's gathering lines and pipe lines are located in the three states of Pennsylvania, West Virginia

and Ohio in what is known as the field producing Pennsylvania Grade Crude Oil; this field is served by certain common carrier pipe lines, namely: The National Transit Company, The Southwest Pennsylvania Pipe Lines, The Eureka Pipe Line, The Buckeye Pipe Lines, The New York Transit Company, The Bradford Transit Company, some of which operate in each county in which the Petitioner has lines and in close proximity thereto. The Petitioner has been and is operating its pipe lines, for over forty-five years, serving its refineries at Butler, Pennsylvania, and Warren, Pennsylvania. The Warren refinery has been shut down since 1932. The Petitioner buys all of the oil which meets its requirements and specifications direct from the producer and transports the same to its refinery. The Petitioner produces no oil. The Petitioner has never transported any oil except its own and has never exercised the right of eminent domain. No demand has ever been made upon the Petitioner to transport any oil for other parties, nor were the lines of the Petitioner laid and arranged to make deliveries of oil for outside parties. The Petitioner [fol. 5] has during all these years conducted its business privately, and operated its gathering lines and pipe lines as a plant facility in connection with its manufacture of lubricating oil, and owns and maintains its lines and pump stations on private property and private rights of way.

III

The Petitioner was ordered by the Director of the Bureau of Valuations to make certain valuation returns to the Interstate Commerce Commission under Valuation Order No. 26 Revised, effective December 31, 1934, such valuation returns to be made not later than March 7, 1936. A copy of Valuation Order No. 26 Revised is attached hereto and marked Exhibit "A". Thereupon, your Petitioner filed with the Commission a petition designated as Valuation Docket No. 1202, Petition of the Valvoline Oil Company in the Matter of the Valuation of its Pipe Lines, contending that it was not a common carrier and praying that an opportunity be granted to it to be heard and present the facts in argument for the determination of the questions presented. A true and correct copy of the complaint, [fol. 6] marked Exhibit "B" is annexed hereto and made a part hereof as fully as though set forth at length herein.

IV

Hearings were held, testimony taken, briefs were filed and the case was argued orally before the Commission. On February 2, 1937, Division I of the Commission issued its report and order (47 Val. Rep. 534) and made the following finding:

"We find that the Valvoline Oil Company is engaged in the transportation of oil by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. It should therefore comply with our Valuation Order No. 26 and furnish promptly the information called for therein. No further order is required at this time."

A true and correct copy of said report, marked Exhibit "C", is annexed hereto and made a part hereof as fully as though set forth at length herein.

V

On or about June 15, 1937, Petitioner asked for a rehearing based on changes in conditions in operation and this petition was granted and further hearing and testimony was taken and reargument was had before the entire Com-[fol. 7] mission. A true and correct copy of said petition for rehearing, marked Exhibit "D", is annexed hereto and made a part hereof as fully as though set forth at length herein.

VI

On June 6, 1938, the report of the Commission was filed on the further hearing at which time the Commission made the following finding:

"We find that the Valvoline Oil Company is a common carrier of oil by pipe lines, and that it is subject to the provisions of the Interstate Commerce Act. The finding of Division I in the original report is accordingly affirmed.

"An order will be entered directing the Valvoline to comply with the provisions of our Valuation Order No. 26 previously served upon it in connection with the proceedings under Section 19a of the act, within ninety (90) days from the date of service hereof. The date of valuation is hereby fixed as of December 31, 1937."

The following order was made:

"*It appearing,* That the Valvoline Oil Company was duly served with a copy of Valuation Order No. 26, issued by this Commission, requiring the filing within a time specified of certain maps and information required for the valuation of its pipe line property under section 19a of the Interstate Commerce Act;

[fol. 8] "*It further appearing,* That the operation of said Valuation Order No. 26 was suspended pending a determination by this Commission of its jurisdiction over said Valvoline Oil Company as a carrier of oil by pipe line;

"*And it further appearing,* That the Commission has made and filed a report finding that the Valvoline Oil Company is a common carrier of oil by pipe line and subject to the provisions of the Interstate Commerce Act, which said report is hereby referred to and made a part hereof;

"*It is ordered,* That the suspension of said Valuation Order No. 26 be, and it is hereby, vacated;

"*And it is further ordered,* That said Valvoline Oil Company comply with the provisions of said Valuation Order No. 26 within 90 days from the date of service hereof and as of December 31, 1937.

By the Commission.

W. P. Bartel, Secretary. (Seal.)"

A true and correct copy of the Commission's report on further hearing, marked Exhibit "E", is annexed hereto and made a part hereof as fully as though set forth at length herein.

VII

The Petitioner alleges that the Commission's order is arbitrary, erroneous, invalid, in excess of the powers conferred upon it by the statute hereinafter named, and is, therefore, unlawful and void in that the Commission through its Bureau of Valuation attempts to exercise its [fol. 9] regulatory authority upon the operation of the pipe lines of the Petitioner and to declare the Petitioner a common carrier under the provisions of the Hepburn Act of June 29, 1906, 34 Stat. 584, the pertinent provisions of which read as follows (U. S. Code Title 49, Chapter 1):

Part I (1)

Regulation in General; Car Service; Alteration of Line

Sec. 1 (As amended June 29, 1906, April 13, 1908, June 18, 1910, May 29, 1917, August 10, 1917, February 28, 1920, June 19, 1934, and August 9, 1935.) (U. S. Code, title 49, sec. 1.)

1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation (4) takes place within the United States.

[fol. 10] 3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation (11) as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery

of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. (12)

The provision for valuation of properties by the Interstate Commerce Commission is found in Section 19a:

Sec. 19a. (Added March 1, 1913, and amended February 28, 1920, June 7, 1922, June 16, 1933, and August 9, 1935). (U. S. Code, title 49, sec. 19a.) (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action [fol. 11] is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier subject to the provisions of this part in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

The Petitioner further alleges that it never has operated as a common carrier; that it never exercised any of the privileges or rights of a common carrier; that it never had any demands made upon it to perform any of the duties of a common carrier; that the district in which it operates is amply provided with service by common carrier pipe lines to adequately care for all the needs of the

producers of oil; that the relationship between the Petitioner and the producer is that of buyer and seller in a private transaction which is entirely voluntary and from which the producer can withdraw at any time; that there is no written contract or agreement between the Petitioner and producer, and the Petitioner in no way controls or fixes the price at which the crude oil is purchased, and that [fol. 12] Petitioner's pipe line has been and is operated as a facility of its refinery in the refining of its crude oil and the distribution of its products, and that the act has no application to the operations of the Petitioner, and the attempt on the part of the Commission to exercise its authority over the Petitioner's pipe lines is beyond the statutory power of the Commission.

VIII

The Petitioner alleges that the Commission's order is arbitrary, in excess of its statutory powers, unlawful and void in that the record contains no evidence to support the Commission's finding and conclusion that the Valvoline is a common carrier by pipe line under the provisions of the Interstate Commerce Act, nor does it show that the Valvoline is or has been engaged in the business of a common carrier by pipe line, or that there has been or is any so-called public interest in the purchase of oil from producers by Valvoline, or that the transportation by Petitioner of its own oil in its own pipe line to its own refinery was or is transportation in interstate commerce by a common carrier pipe line, and that the Commission was not justified in [fol. 13] issuing an order requiring the Valvoline to subject its pipe lines to the valuation order and other regulatory provisions of the Interstate Commerce Act.

IX

The Petitioner further alleges that the Commission's order requires compliance within a period of ninety days from the date thereof, June 6, 1938, and avers if within such period of ninety days the valuation order is not stayed by this court, the Petitioner will be required to give access to its records to the Commission's employees and its agents; to devote considerable time and labor to the preparation of the data required by the order; and further it will be required to make the expenditure of large sums of money, to its irreparable damage. Petitioner also avers that the preparation for the hearings before this court, if hearings

are had, will require much time and labor, and that it will not be possible to prepare adequately therefor within the ninety day period. Furthermore, no individual, partnership, or corporation, or organization of any kind, other than Valvoline, participated in the proceedings before the said Interstate [fol. 14] Commerce Commission, and thus no damage will be occasioned or interest impaired by a stay or suspension of the order until the final decision of the court, and, therefore, Petitioner should be allowed additional time, and compliance with the order should be postponed pending final determination of this proceeding.

Wherefore, your Petitioner, being without adequate remedy at law, respectfully prays:

1. That upon the filing of this petition the presiding Judge of this Court shall call to his assistance in the hearing and determination thereof two other judges of whom at least one shall be a Circuit Court Judge;

2. That process may issue against the defendant, The United States of America, and that after not less than five (5) days notice to the Interstate Commerce Commission and to the Attorney General of The United States, as provided in the statutes, a hearing be held and an interlocutory injunction be issued, staying and suspending the said order of the Interstate Commerce.

3. That upon final hearing of this cause a permanent injunction issue decreeing that said order of the Commission is null and void and set aside, annulled and suspended, and [fol. 15] its enforcement, execution and operation be forever enjoined, and that The United States of America be restrained from taking any steps, issuing any further orders, instituting or further prosecuting any proceeding to enforce the aforesaid order or any subsequent orders relating thereto.

4. That such other and further relief as may be proper in the premises be granted to the Petitioner.

Respectfully submitted, W. D. Brandon, J. Campbell Brandon, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Solicitors for the Petitioner.

[fol. 16] *Duly sworn to by C. W. Luton. Jurat omitted in printing.*

[fol. 17] EXHIBIT "A" TO PETITION

Valuation Order No. 26—Revised

Instructions To Govern the Preparation and Filing by Common Carriers by Pipe Line of Maps, Charts and Schedules as Prescribed by the Interstate Commerce Commission in Accordance with Section 19a of the Interstate Commerce Act, Revised Issue, Effective December 31, 1934

Order

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 31st day of December, A. D. 1934.

The subject of specifications for maps, charts, and schedules to be prescribed for and applied by common carriers by pipe lines being under consideration:

It is ordered, That the specifications for maps, charts, and schedules, Sections A to F, inclusive, a copy of which is filed with and made a part of this order, are hereby approved and adopted.

[fol. 18] It is further ordered, That the said specifications for maps, charts, and schedules be, and the same hereby are, prescribed for the use of all pipe line companies subject to the provisions of the act to regulate commerce, as amended, in the preparation of all maps, charts, and schedules which shall be required to be prepared for or filed with this Commission in accordance with section 19a of the act to regulate commerce; that each and every company and each and every receiver or operating trustee of any such company be required to prepare and furnish to the Commission all maps, charts, and schedules in conformity herewith, and that a copy of said specifications be sent to each and every such company and to each and every receiver or operating trustee of any such company.

It is further ordered, That every pipe line company and each and every receiver or operating trustee of any such company shall prepare and furnish to the Commission in accordance with such specifications complete maps, charts, and schedules of its property as it exists on the date assigned for the valuation of that property within 60 days after such date of valuation; provided, however, that no such company shall be required to prepare or file any map, chart,

[fol. 19] or schedule within less than 60 days from the receipt of written notice from the Director of the Bureau of Valuation, of this Commission, stating the date of valuation for such company.

It is further ordered, That Valuation Order No. 26, effective September 10, 1934, be, and it is hereby, superseded and cancelled as of the effective date of this order.

By the commission, division 1.

George B. McGinty, Secretary. (Seal.)

[fol. 20]. EXHIBIT "B" TO PETITION

BEFORE THE INTERSTATE COMMERCE COMMISSION

Petition of the Valvoline Oil Company in the — of the Valuation of Its Pipe Lines

Comes now your petitioner and respectfully requests the Commission to grant a hearing to determine the status of its pipe lines, and for cause respectfully shows that:

I

The Valvoline Oil Company is a corporation created and existing under the laws of the State of New Jersey, having its principal office in Cincinnati, Ohio, and maintaining offices and oil refineries at Butler, Pennsylvania, and Warren, Pennsylvania.

II

In the business of refining crude oil and marketing its products, the Valvoline Oil Company owns and maintains private oil lines and through them transports crude oil from the oil fields of western Pennsylvania, eastern Ohio and [fol. 21] northern West Virginia to its refineries. This oil is purchased from producers at the wells and is transported to its refineries. The Valvoline Oil Company does not transport any oil except its own.

III

The Valvoline Oil Company has received a letter from the Director of the Bureau of Valuation, with a copy of Valuation Order No. 26, Revised, effective December 31, 1934, directing certain valuation returns to be filed with the Commission not later than March 7, 1936.

IV

Your petitioner, The Valvoline Oil Company, contends that it is not a common carrier, and in support thereof shows that—

(a) It buys its oil direct from the producers and only buys such oils as will meet the requirements at its refinery and of its trade. All oil that is purchased by it is first tested in its laboratory to ascertain if the oil meets its requirements. The high quality which the Valvoline Oil Company requires for its product is made necessary because it sells its oils and products to consumers whose uses require the highest standards, and this can only be done by strict control of [fol. 22] the crude oil purchased and refined. More than forty (40) years ago the Valvoline Oil Company was compelled to acquire its own pipe lines in order that it might be assured of a sufficient and constant supply of crude oil of the desired quality. Its pipe lines are an essential part of its business, because it cannot purchase and have delivered by common carriers the qualities and grades of crude oil which it requires at its refineries.

(b) The Valvoline Oil Company has no facilities for storage and distribution of oil through its pipe lines of the grades not used by it in its refineries. Furthermore, if it were compelled to receive in its lines grades of oil unsatisfactory for use at the refineries and to mix such oil with satisfactory grades, the purpose of the pipe lines as a plant facility would be defeated.

(c) The Valvoline Oil Company has never exercised the right of eminent domain.

Wherefore, your petitioner prays that the Interstate Commerce Commission grant it opportunity to be heard and to present the facts and arguments upon which petitioner relies; and pending the determination of the questions pre- [fol. 23] sented, that the Commission and its officers refrain from making or issuing to petitioner any order or orders with respect to the valuation of the pipe lines of petitioner.

——— ———, ——— ———, Attorneys for Valvoline Oil Company, Butler, Pennnsylvaia.

Address reply to Brandon, Brandon & Ross, 704 Savings and Trust Bldg., Butler, Pa.

Also, please send copies of all correspondence, notices and orders to Fayette B. Dow, National Petroleum Association, Munsey Building, Washington, D. C.

[fol. 24] *Duly sworn to by C. J. Leroux. Jurat omitted in printing.*

[fol. 25] EXHIBIT "C" TO PETITION

47 Val. Rep. 534

Valuation Docket No. 1202

Petition of the Valvoline Oil Company in the Matter of the Valuation of its Pipe Lines

Submitted November 17, 1936. Decided February 2, 1937.

The Valvoline Oil Company found to be engaged in the transportation of oil by pipe line in interstate commerce, and subject to the provisions of the Interstate Commerce Act.

J. Brandon Campbell and Harry S. Elkins for petitioner.

Report of the Commission

Division 1, Commissioners Meyer, Aitchison, and Splawn

By Division 1:

Under date of January 3, 1936, we served upon the Valvoline Oil Company, hereinafter called the Valvoline, a copy of our valuation order No. 26, revised, containing instructions to govern the preparation and filing by common carriers by pipe line of certain information necessary for our use in the valuation of their properties. The Valvoline thereupon filed a petition alleging that it is not a common carrier subject to the provisions of the Interstate Commerce Act and asking that a hearing be granted in order that its status may be determined. A hearing has been held, briefs [fol. 26] have been filed, and oral arguments heard.

The Valvoline is a corporation of the State of New Jersey, authorized by its charter to engage in the production, transportation, manufacture, and marketing of petroleum oil and its products. It owns a refinery at Butler, Pa., with a

capacity of from 60,000 to 65,000 barrels of crude oil per month, where it specializes in the manufacture of motor lubricating oils. Another owned refinery, at Warren, Pa., is not at present in operation. Through its pipe-line department it operates some 1,537 miles of pipe line in the States of Pennsylvania, West Virginia, and Ohio, consisting of about 900 miles of 2-inch pipe, 600 miles of 3-inch pipe, and 20 miles of 4-inch pipe. Its lines receive the output of about 8,000 wells most of which are of small capacity with an average production of less than one-third of a barrel a day. Approximately 72,000 barrels of oil are run monthly, of which 50 percent originates in Pennsylvania, 38 percent in West Virginia, and 12 percent in Ohio. Oil received in excess of the capacity of the Butler refinery is sold and delivered by pipe line by the Valvoline to the Pennsylvania Refining Company at Karns City, Pa., and to the Ohio Valley Refining Company at St. Marys, W. Va. This oil is sold at a delivered price, and no separate charge is made for the transportation from the wells to the refineries.

[fol. 27] The Valvoline does not own any of the wells which it serves but purchases the oil in the producers' tanks, paying therefore semi-monthly, or, if desired, immediately upon receipt. It maintains accounts with 1,750 operators of leases or owners of the wells and with 2,052 owners of the farms on which the oil is produced. The oil is piped from the producers' tanks to the gathering tanks of the Valvoline, usually through 2-inch pipe line, and thence by 3-inch pipe line to the refineries. Producers are not under written contract to sell their oil to the Valvoline, but are free to deliver it at any time to other pipe-line companies serving the fields, dependent only upon obtaining suitable connections. At least one common-carrier pipe-line company serves each of the fields reached by the Valvoline.

In order to meet the industrial specifications for lubricating oils, particularly for foreign markets, the Valvoline requires oil of a clear amber color relatively free from impurities. It declines to purchase oil which fails to meet the color standard maintained. Instances are cited of rejection by the Valvoline of oil tendered to it because unsuitable in color, and in some cases it has refused for the same reason to make its lines available to wells in an entire district. It accepts all oil offered, however, of grades and color satis-

[fol. 28] factory for use in its manufacturing process, and

extends its lines to serve new wells as they are brought in. When both the Butler and Warren refineries are operating the pipe lines are used to their capacity, and it is stated that if the Valvoline is held to be a common carrier, and, as such, required to carry all other oil offered, it would be necessary to provide additional equipment at the refineries, more and larger storage tanks, and increased facilities for pumping along the line and for deliveries at destination. The additional expense, it is claimed, would amount to between $200,000 and $300,000.

The Valvoline does not file tariffs with this Commission or with the regulatory commissions of the States in which it operates. It has no physical connection with common-carrier pipe lines. While authorized by its charter to engage in "transportation business of any kind or character" it has not the right of eminent domain in the State of its incorporation and has not attempted to exercise the right elsewhere. It contends that its pipe line is merely a plant facility by which it brings its own oil to its own refinery for manufacturing purposes. It argues that from the facts as stated it should be held not to be a common carrier within the meaning and intent of the Interstate Commerce Act.

Persons or corporations engaged in the interstate transportation of oil by means of pipe lines were first brought within our jurisdiction by the Hepburn Act of June 29, 1906. [fol. 29] By that act the provisions of section 1 of the Act to Regulate Commerce were made applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act." Except for minor revisions in the language, the provisions affecting pipe-line companies remain unchanged by subsequent amendments. Section 1 of the act, as now in effect, reads in part as follows:

(1) That the provisions of this part (Part I) shall apply to common carriers engaged in—

(*b*) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line, and partly by railroad or by

water; * * * from one State * * * to any other State * * *

(3) The term "common carrier" as used in this part shall include all pipe line companies; * * *

Following the passage of the Hepburn Act a number of the pipe-line companies filed with us tariffs of their rates and charges. Others failed to do so. Among the latter companies that had never held themselves out to be common carriers in that they did not transport oil for the public for compensation but purchased the oil at the wells, transporting it across State lines as their own property for the purpose of refining it or for selling it to others. In view [fol. 30] of the conditions then existing, and upon complaints that had been received, we instituted an investigation on our own motion into the rates, classifications, regulations, and practices of pipe-line companies, and the methods under which they conducted their business, to determine whether any of the provisions of the act were being violated. In the Matter of Pipe Lines, 24 I. C. C. 1.

As the investigation progressed, facts were developed which made it advisable to determine whether, as a matter of law, we were empowered by the act to regulate these pipe lines as common carriers. Questions, based on the record, were formulated and presented to the carriers for argument, the first, pertinent to this proceeding, being—

Does the act to regulate commerce impress the obligations of a common carrier upon a pipe line engaged in the transportation of oil in interstate commerce, even though such pipe line was built over its privately acquired right of way, and (by pursuing a policy of refusing to receive oil into its pipes except as the purchaser of such oil) transports only its own oil?

Upon review of the legislative history of this provision in the Hepburn Act, and upon consideration of the language finally adopted, we concluded that it was clearly the intention of Congress to convert all interstate pipe lines of the country into common carriers no matter what their previous status had been. Whether Congress could lawfully so act was not for us to decide. "The Interstate Commerce Com- [fol. 31] mission is an administrative body which may not presume to annul by interpretation an act of the federal

legislature." As the result of our investigation certain of the pipe-line companies, parties to the proceeding, were ordered to file schedules of rates and charges for the interstate transportation of oil in compliance with the provisions of the act. The Valvoline was not named in our order, although its lines at that time extended across the Pennsylvania-West Virginia State line.

Among the owners of pipe lines against which our order was directed were the Standard Oil Company of New Jersey, The Standard Oil Company of Louisiana, the Ohio Oil Company, the Prairie Oil & Gas Company, The Tide Water Pipe Company, and the Uncle Sam Oil Company. Except for the latter, these companies were owned or controlled by the Standard Oil Company, or were companies in which it had a substantial interest, and followed a common policy with respect to the operation of their pipe lines. They carried the greater part of the crude oil from the fields of production to eastern refining points, but carried it as their own by requiring the producers to sell the oil to them before transportation. These companies brought suit in the Commerce Court to set aside and annul our order on the ground, among others, that in declaring persons or corporations using pipe lines in transporting their own [fol. 32] oil in the conduct of their business to be common carriers Congress had exceeded its constitutional powers. The Commerce Court held the statute to be unconstitutional in that it applied to every pipe line that crossed a State boundary and issued a preliminary injunction. (Prairie Oil & Gas Co. v. United States 204 Fed. Rep. 798.) Upon appeal to the Supreme Court of the United States this decision was reversed except as to the Uncle Sam Oil Company. (The Pipe Line Cases, 234 U. S. 548.) The Court held that the transportation described was clearly commerce among the States and as such under the control of Congress, and, further, that while the act did not compel existing pipe lines to continue in operation it did require them not to continue to transport oil for others or purchased by themselves except as common carriers. The Uncle Sam Oil Company owned wells in Oklahoma and a refinery in Kansas with a pipe line which it used to bring the oil from the wells to the refinery. As to that company the court said:

It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was

engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end.

The Valvoline contends that The Pipe Line Cases were decided largely on the question of monopoly of the fields [fol. 33] served, and that, as it buys only a very small part of the total production and has never compelled a producer to sell to it or be deprived of a market, the circumstances governing that decision do not apply to it. It argues that its pipe line is used in precisely the same manner and for the same purpose as that of the Uncle Sam Oil Company, namely, to bring its own oil to its own refinery for manufacture, and that the transportation of the oil is merely incidental to such use. It is urged that the Uncle Sam Oil Company case was not decided on the ground that the company carried solely oil which it had produced but because it carried oil which it owned, whether purchased or produced. That this is not the basis for the decision is apparent from an examination of the opinion. It was not ownership of the oil at the time of transportation that brought the companies within or excluded them from the operation of the statute. Those companies that were held to be common carriers were engaged in the carriage of their own oil but "coming from many owners", in other words, from the public, and it was immaterial that the oil was purchased and became the property of the carriers before its transportation. There was no public interest, on the other hand, in the operations of the Uncle Sam Oil Company. No producer or shipper was served by that company. As stated by Mr. Justice McKenna in his dissenting opinion, "And I take it if the companies had not made purchases of oil or refused offers of oil, they would not [fol. 34] be held subject to the act. Such is the situation of the Uncle Sam Oil Company and the ground of decision in regard to that company". The Valvoline affords a market for the product of 8,000 wells, none of which does it own, and has dealings with the public through its relations with 3,802 land owners or producers of oil. It also

serves at least two other refineries, transporting to them by pipe line about 20,000 barrels of crude oil per month. We find that there is a public interest served in the movement of the commodity carried by it. In view of the dissimilarity in the operations of the two companies the fact that the Uncle Sam Oil Company was found not to be a common carrier does not require a similar finding with respect to the Valvoline.

Reference is made in the brief on behalf of the Valvoline to Producers' Transp. Co. v. Railroad Comm. of California, 251 U. S. 228. That proceeding involved the constitutionality of a statute of the State of California and of an order thereunder made by the Railroad Commission of the State requiring the Producers Transportation Company, engaged, as it claimed, in transporting oil by pipe line for particular producers under private contracts, to file with the Commission schedules of its rates and charges and the rules and regulations under which the transportation was conducted. The portion of the decision to which our atten- [fol. 35] tion is directed reads as follows:

It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, that is, to carry for the public, the state could not by mere legislative fiat or by any regulating order of a commission, convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the 14th Amendment. (Citations) On the other hand, if in the beginning or during its subsequent operation the pipe line was devoted by its owner to public use, and if the right thus extended to the public has not been withdrawn, there can be no doubt that the pipe line is a public utility and its owner a common carrier whose rates and practices are subject to public regulation.

The constitutionality of the statute and the validity of the order in that case were upheld. The decision does not differ in principle from The Pipe Line Cases. Carriage for the public was the governing factor in both cases.

As further support for its contention that its pipe line is a plant facility and not an instrumentality of interstate

commerce the Valvoline cites the decision of the Supreme Court of Illinois in Tidewater Pipe Co. v. Board of Review, 143 N. E. 87, holding that a pipe line company which purchased oil from producers in Illinois and subsequently shipped it to its plant in Bayonne, N. J., was not a common carrier. The court said:

We are of the opinion that the facts in the case do not show that appellant is a common carrier. In the cases known as the Pipe Line Cases, 234 U. S. 548, 34 Sup. Ct. 956, 58 L. Ed. 1459, it was held that an oil company using a pipe line solely for the purpose of conducting its own oil [fol. 36] from its own wells in one state to its own refinery in another state is not a common carrier engaged in interstate traffic, so as to come under the Interstate Commerce Act * * * In this case it appears that the oil was purchased by appellant in Crawford County, to be shipped to its own plant in Bayonne, N. J., and, so far as the record shows, it handles no oil except its own, and no distinction in the application of that holding appears to arise here by reason of the fact that the oil was purchased in Crawford County instead of coming from the wells of appellant there.

The Tide Water Pipe Company was one of the companies held by the Supreme Court of the United States in The Pipe Line Cases to be a common carrier. The contrary holding of the Supreme Court of Illinois therefore cannot be considered as authority and must be disregarded.

We find that the Valvoline Oil Company is engaged in the transportation of oil by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. It should therefore comply with our valuation order no. 26 furnish promptly the information called for therein. No further order is required at this time.

By the Commission, division 1.

George B. McGinty, Secretary (Seal.)

[fol. 37] EXHIBIT "D" TO PETITION

BEFORE THE INTERSTATE COMMERCE COMMISSION

Valuation Docket #1202

Petition of the Valvoline Oil Company in the Matter of the Valuation of Its Pipe Lines

Petition for a Rehearing before the Commission Based on changes in conditions of operations.

To the Interstate Commerce Commission:

Comes now your petitioner and respectfully requests the Commission to grant a re-hearing on the determination of the status of its pipe lines, and respectfully shows:

First. The evidence taken at the hearing on this petition shows that, due to the shut-down of the Warren refinery, the Valvoline had oil in excess of its requirements at the Butler refinery; that this excess oil was delivered to the Pennsylvania Refining Company at Karns City, Pennsylvania, and to the Ohio Valley Refining Company at St. Mary's, West Virginia. Testimony of Mr. C. W. Luton, [fol. 38] page 12:

"Q. Aside from your own lines, you do not have other connections at present?

A. Yes, we have other connections.

By Examiner Pattison:

Q. You had better describe them.

A. We have a connection into the Pennsylvania Refining Company; our line connects right by their plant, and we made that connection some time ago in order to take care of what little excess crude we might have by shutting down the Warren plant; then, we have a connection into the St. Mary's plant of the Ohio Valley Refining Company at St. Mary's West Virginia. We put that connection in. We are selling about 5,000 barrels a month; between the two companies they take care of the excess that we have that was formerly used by our Warren plant.

By Mr. Brandon:

Q. Do you have any connection with any common carrier line?

A. Not to my knowledge, no, sir."

Also page 14:

"Q. As I understand your testimony, the point was that your company now had physical connections with two other lines?

A. We have; yes, sir.

Q. Besides the Valvoline?

A. Yes, sir.

Q. One was the Pennsylvania Refining Company?

A. Yes, sir.

[fol. 39] Q. The other one was what?

A. The Ohio Valley Refining Company at St. Mary's West Virginia.

Q. And you are now making deliveries to the St. Mary's refinery?

A. Yes, sir.

Q. What about the Pennsylvania refinery?

A. We are making deliveries to them, too."

Second. Since the hearing in this case all transportation of oil across state lines to any outside refinery has ceased; the only oil now transported interstate is for use in the Valvoline refinery, conveyed directly to the refinery in its own lines.

Third. The testimony in this case does not clearly show whether the shipments to the Pennsylvania Refining Company and the Ohio Valley Refining Company were interstate shipments or not. The Commission in its opinion apparently assumes that all the oil is transported to the Valvoline refinery at East Butler and that these shipments are all interstate when it says in its opinion of February 2, 1937,— "Approximately 72,000 barrels of oil are run monthly, of which fifty per cent originates in Pennsylvania, thirty-eight per cent in West Virginia and twelve per cent in Ohio Oil received in excess of the capacity of the Butler refinery is [fol. 40] sold and delivered by pipe line by the Valvoline to the Pennsylvania-Refining Company at Karns City, Pennsylvania, and to the Ohio Valley Refining Company at St. Mary's, West Virginia. This oil is sold at a delivered price and no separate charge is made for the transportation from the wells to the refineries."

Fourth. The petitioner believes that a rehearing is essential and necessary to give it an opportunity to present further testimony and put in the record material facts to show:

(a) That no part of the oil delivered to the Pennsylvania Refining Company is transported over state lines, but is, on the contrary, all produced in Northwestern Pennsylvania and delivered directly from the gathering lines to the refinery without being pumped to and mingled with other oil at the Valvoline refinery at East Butler, and that the amount of excess crude delivered to the Pennsylvania Refining Company has been greatly reduced since the hearing in this case.

(b) That all the oil delivered to the Ohio Valley Refining Company at St. Mary's, West Virginia, is produced in West Virginia; that there has been a change made in the Valvoline operations since the hearing whereby a small amount of Ohio crude heretofore mingled with the West Virginia oil delivered to the refinery at St. Mary's, West Virginia, is now pumped direct to the Valvoline refinery at East Butler, [fol. 41] Pennsylvania.

(c) That the amount of excess oil sold to the Pennsylvania Refining Company and the Ohio Valley Refining Company has been so greatly reduced since the hearing that the amount is almost negligible.

Fifth. That the Pennsylvania Refining Company has a monthly capacity of approximately 60,000 barrels per month and has, since its inception, purchased the greater part of its crude for delivery by National Transit lines; that it is in no way dependent on the Valvoline crude for its operation and that its deliveries by the Valvoline are only incidental and temporary; that the Valvoline can discontinue said delivery at time without inconvenience or harm to the Pennsylvania Refining Company, which has direct pipe line connections with the Standard group.

Sixth. That the capacity of the Ohio Valley Refining Company at St. Mary's, West Virginia, is approximately 60,000 barrels per month; that it purchases the larger part of its crude from the Eureka and Buckeye Pipe Lines, and has never depended upon the Valvoline deliveries for its operations; that the Ohio Valley Refining Company has direct connections to its refinery with common carrier pipe lines of the Standard group.

Seventh. That the excess oil sold by the Valvoline is entirely local or intrastate, and the only oil transported by pipe line across state lines is oil owned by the Valvoline and

[fol. 42] carried exclusively in its own pipe lines, and that no outside or public interest is or was ever served in the movement of the oil carried by the Valvoline.

Wherefore, your petitioner prays that the Interstate Commerce Commission grant it a rehearing and an opportunity to present additional pertinent facts showing the changed conditions, and that, pending determination thereof, the Commission and its officers refrain from making or issuing any order on the Valvoline with respect to the valuation of its pipe lines or designating it as a common carrier.

Harry S. Elkins, 930 Munsey Building, Washington, D. C.; Brandon and Brandon, 704 Savings & Trust Building, Butler, Pennsylvania, Attorneys for Valvoline Oil Company.

[fol. 43] *Duly sworn to by C. W. Luton. Jurat omitted in printing.*

[fol. 44] EXHIBIT "E" TO PETITION

INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1202

Petition of the Valvoline Oil Company in the Matter of the Valuation of Its Pipe Lines

Submitted April 1, 1938. Decided June 6, 1938

Upon further consideration finding in original report, 47, Val. Rep. 534, that the Valvoline Oil Company is a common carrier of petroleum oil by pipe line subject to the provisions of the Interstate Commerce Act, affirmed.

Appearances as in the original report.

Report of the Commission on Further Hearing

By the Commission:

In the original report in this proceeding, 47, Val. Rep. 534, Division 1 held that the Valvoline Oil Company, hereinafter generally referred to as the Valvoline, was engaged in the interstate transportation of crude petroleum oil by pipe line under *dic*tumstances which brought it within the provisions

of the Interstate Commerce Act. No order was entered but the Valvoline was instructed to comply with an order under section 19a of the act previously served upon it directing it to prepare and file certain information required for our use in valuing the property of common carriers by pipe line. The [fol. 45] Valvoline thereupon filed a petition for rehearing for the purpose of showing that certain changes had been made in its methods of operation subsequent to the date of the report of Division 1 and for the further purpose of supplementing on argument its contention that under a proper interpretation of the legal principles involved it must be held not to be a common carrier. The petition was granted and rehearing and reargument have been had.

The Valvoline Oil Company originated in a partnership formed some 70 years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pa., through which oil was gathered for shipment in tank cars to the refinery at Edgewater, N. J. Later, a refinery was built at Warren and some of the oil was refined there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, transportation, manufacture, and marketing of petroleum oil and its products, without, however, the right of eminent domain in New Jersey. At the time of its incorporation it was refining about 22,000 barrels of oil per month.

As the demand for lubricating oil grew the pipe line system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pa. [fol. 46] The movement of oil in that year amounted to about 55,000 barrels per month. Up to that time all of the oil transported by the Valvoline moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio line was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, W. Va., was purchased and lines were laid in southeastern Ohio. The Valvoline now operates 1,426 miles of pipe line, consisting of 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe. About 50 per cent of the oil transposted originates in Pennsylvania, 38 per cent in West Virginia, and 12 per cent in Ohio.

Several other oil pipe lines, both common carrier and private, extend through or are in close proximity to the fields served by the Valvoline. The common carrier pipe lines are the National Transit Company and the South-West Pennsylvania Pipe Lines, in Pennsylvania, The Eureka Pipe Line Company, in West Virginia, and the Buckeye Pipe Line Company, in Ohio. None of the companies serves the wells from which the Valvoline receives its oil.

The Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil used by it directly from *from* the producers [fol. 47] in the field. It carries, therefore, only oil of which it is the owner. For its manufacturing purposes it prefers a selected grade of a light amber color and some of the oils produced along its lines are not satisfactory because too dark or because they contain undesirable ingredients difficult to eliminate in the refining process. It refuses to buy or admit into its lines oils that do not meet its specifications and the producers thereof must therefore find an outlet through other pipe lines and sales to other refiners. Several instances of rejections of oil by the Valvoline are mentioned in the record. Any producer, however, within reasonable distance of the Valvoline's lines, having oil of the desired quality and not already receiving pipe line service, is afforded a market for his oil through sale to the Valvoline, and if his well is located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny county line, he receives a premium of five cents per barrel over the posted market price.

At the time of the rehearing, in November, 1937, the pipe lines of the Valvoline were serving exclusively 9,020 wells, of which 6,291 were in Pennsylvania, 1,370 in West Virginia, and 1,359 in Ohio. These are generally so-called stripper wells from which the average daily run is 0.20 barrel in Pennsylvania, 0.56 barrel in West Virginia, and 0.25 barrel in Ohio. The oil was then being collected in [fol. 48] 2,678 tanks owned by the producers and located on 2,075 farms. Because of the slow accumulation of the oil many of these tanks are drained as infrequently as once a year and in some instances only once in four years. The Valvoline serves actually less than 500 producers or groups but by reason of fractional interests in royalties and leases it has dealings with and account to 2,014 royalty owners

and 1,751 lease operators for the oil it purchases. These owners and operators have no other present outlet for their oil. According to testimony of record, in the event the Valvoline should refuse to accept it they could receive service from one of the common carrier pipe line companies provided they were able to tender at least five barrels per day per mile of pipe line extension necessary to make the connection. In view of the fact that the average run of oil from all the wells served by the Valvoline is but little over half a barrel per day, this requirement would undoubtedly deprive many of the producers of a pipe line outlet and market for their oil.

In 1932 economic conditions brought about a curtailment of operations and the refinery at Warren was closed. The Valvoline, instead of limiting its purchases to the quantity of oil that could be refined at East Butler, continued as [fol. 49] before to purchase all oil of suitable grade offered, with the result that it received and has continued to receive an excess of oil over its ability to refine. Having no use for this oil in its own operations it entered into arrangements with the Pennsylvania Refining Company at Karns City, Pa., and with the Ohio Valley Refining Company at St. Marys, W. Va., under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania and its movement through the Valvoline's lines is intrastate. At the time of the first hearing some of the oil sold to the Ohio Valley Refining Company originated in Ohio and moved across the Ohio-West Virginia state line. Sale of the Ohio oil was discontinued after the report of Division 1 had been served upon the Valvoline and since then deliveries to the plant at St. Marys have consisted exclusively of oil originating in West Virginia. In both instances the oil is sold at Delivered prices which include amounts to cover the cost of transportation.

The Interstate Commerce Act as amended and now in force provides in Part 1, Section 1—

(1) That the provisions of this part shall apply to common carriers engaged in—

(*b*) The transpostation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or [fol. 50] partly by pipe line and partly by railroad or by water;—from one State * * * to any other State * * *.

(3) The term "common carrier" as used in this part shall include all pipe line companies; * * *.

These provisions became part of the Act to Regulate Commerce with the enactment of the Hepburn Act in 1906. Monopolistic practices of some of the larger oil companies and their control of the distribution of oil through dictation of prices and refusal to carry it except as owners were among the considerations that influenced Congress to declare in the Hepburn Act that thereafter "any co-poration or any person or persons engaged in the transportation of oil * * * by means of pipe lines * * * shall be considered and held to be common carriers within the meaning and purpose of this act." No exceptions were made; all interstate carriers of oil by pipe line, large or small and regardless of the nature of their operations, were by the statute declared to be common carriers.

Many of the interstate pipe line companies then operating accepted this declaration by Congress without question and proceeded to file with us schedules of rates and charges for the transportation of oil. Others refused to do so on the ground that as they did not carry oil for compensation but purchased it at the wells prior to transportation for their own use or for sale to others, they were not engaged in [fol. 51] common carrier operations and therefore were not within the statute. This situation led us to institute an investigation into the rates, classifications, regulations, and practices of pipe line companies and the methods under which they conducted their business, to determine whether any of the provisions of the act were being violated. In the Matter of Pipe Lines, 24 I. C. C. 1. We quote from our report in that case:

We shall not consider the constitutional question here involved. If there was doubt in our minds as to the purpose of Congress, it would be proper to resolve that doubt upon the side of constitutional safety, but it seems quite manifest to us, from the history of this amendment to the act and from its language, that Congress intended to convert the interstate oil pipe lines of the country into common carriers. Whether Congress could lawfully so act is a matter for the courts judicially to decide. The Interstate Commerce Commission is an administrative body which may not presume to annul by interpretation an act of the federal legislature. * * *

This seems to be the plain meaning of the act, that all pipe lines carrying oil from one state to another state, no matter what their previous status, should be thenceforward considered and deemed to be common carriers.

That proceeding came before the Supreme Court of the United States in the Pipe Line Cases, 234 U. S. 548, upon appeal by the Government from the holding of the Commerce Court in Prairie Oil & Gas Co. v. United States, 204 Fed. Rep. 798, that the statute was unconstitutional since it ap- [fol. 52] plied to every pipe line that crossed a state boundary. The cir-stances under which the act had been passed were said by the Supreme Court to be of common knowledge. The Standard Oil Company, through its control of pipe lines, had created a monopoly of the transportation of oil from the producing fields to eastern refineries and had availed itself of that monopoly by refusing to accept oil for transportation unless it had been previously sold to it or its subsidiaries and on its own terms. In this way, the Court said, it had made itself master of the fields without the necessity of owning them and carried across half the continent a great subject of international commerce coming from many owners but by duress carrying it all as its own.

In discussing the construction of the statute the Court said:

The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words 'who shall be considered and held to be common carriers within the meaning and purpose of this act' obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.

This, the Court held, was lawfully within the power of Congress. As to future pipe lines there was no doubt that [fol. 53] the act was valid, and it is to be noted that the Valvoline did not begin interstate operations until long after the passage of the act. And, as to existing corporations, the court held that although the pipe line provision did not compel them to continue in operation, it did require

them not to continue to transport oil for others or purchased by themselves except as common carriers.

An exception to the general application of the act was found by the court in the case of the Uncle Sam Oil Company. That company made no purchases of oil but produced its oil from its own wells in Oklahoma and transported it through its own pipe line to its refinery in Kansas, there to be refined. No producer or owner of oil was affected by or interested in its operations. It was held not to fall within the description of the act.

The Valvoline concedes that its ownership of the oil at the time of transportation is not of itself a sufficient reason for holding the pipe line to be a private plant facility, but argues that the ownership coupled with the particular use the company has for the oil makes its operation a bona fide private business. It contends that the decision in The Pipe Line Cases was based on the monopolization of the oil business to the detriment of the public interest, and that since it [fol. 54] has no monopoly with respect to transportation and no control over the prices received by the producers the statute should not be held as applicable to it.

Although the debates in Congress clearly show that monopoly was the evil aimed at and the reason for the legislation nowhere does it appear from the decision of the court that only those companies enjoying a monopoly were to be affected by the act. The decision, as we interpret it, is not to be so restricted but plainly means that all interstate pipe line companies whose operations affect the public by affording a substantial number of owners and operators of oil wells facilitates for the transportation and marketing of their oil are to be regarded as common carriers and required to conduct their business accordingly. Considering the wide spread operations of the Valvoline and the many owners and operators of wells affected thereby we concur in the finding of Division 1 in the original report that there is a public interest served in the movement of the oil carried by it.

The Valvoline further argues that under the later decision of the Supreme Court in Penna. R. Co. v. P. U. Comm'n., 298 U. S. 170, the crude oil which it purchases and carries to its refinery is not "in commerce" and therefore is not subject to our regulation with respect to rates. In that case the Pittsburgh Coal Company, owning coal mines [fol. 55] in Pennsylvania and a plant in Ohio for the treat-

ment of coal, moved coal from the mines to the plant over its own barge and rail facilities, and after treatment at the plant shipped the coal by a common carrier railroad to various destinations where it was to be used. On four carloads shipped from the plant to points in Ohio the initial carrier assessed charges at the rates applicable on intrastate traffic but connecting carriers refused to accept the cars for delivery except upon payment of rates applicable on interstate traffic, on the theory that the movement from the plant was part of a through interstate movement from the mines. The question before it, the court said, was "not whether the movement of coal is to be classified as commerce or even as commerce between states" but "whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission." The Interstate Commerce Act, the court pointed out, is aimed at common carriers exclusively, and a common carrier by railroad is defined in section 1 (3) as one employed in the transportation for hire. The only common carriers within the definition of the act, engaged in the transportation of the coal, were those over whose rails the traffic moved after it had reached the plant. A different definition applies, however, to pipe line companies. All interstate pipe line companies are declared by [fol. 56] the statute to be common carriers, and as to them the qualifying expression "for hire" was purposely omitted from the definition. In the Matter of Pipe Lines, supra. Penna. R. Co. v. P. U. Comm'n. is not authority for holding the Valvoline to be exempt from the provisions of the act.

Congress has announced a broad general policy respecting the regulation of oil pipe lines in terms that can not be misunderstood and it is our duty to carry out that policy as we find it expressed in the statute. It has declared that any corporation or any person in control of a pipe line transporting oil whose operations extend across a State line shall be considered and held to be a common carrier, and the validity of this enactment has been upheld by the Supreme Court except under circumstances not here present. The Valvoline is a corporation engaged, among other things, in the transportation of oil from one State to another State. It is thus clearly a common carrier within the definition of the act, and in our opinion its relationship with producers and owners of oil in the producing fields differentiates it from the class of pipe line companies repre-

sented by the Uncle Sam Oil Company, held by the court to be not within the description of the act.

[fol. 57] We find that the Valvoline Oil Company is a common carrier of oil by pipe line and that it is subject to the provisions of the Interstate Commerce Act. The finding of Division 1 in the original report is accordingly affirmed.

An order will be entered directing the Valvoline to comply with the provisions of our Valuation Order No. 26, previously served upon it in connection with proceedings under section 19a of the act, within 90 days from the date of service hereof. The date of valuation is hereby fixed as of December 31, 1937.

[fol. 58] Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of June, A. D. 1938

Valuation Docket No. 1202

Petition of the Valvoline Oil Company in the Matter of the Valuation of Its Pipe Lines

It appearing, That the Valvoline Oil Company was duly served with a copy of Valuation Order No. 26, issued by this Commission, requiring the filing within a time specified of certain maps and information required for the valuation of its pipe line property under section 19a of the Interstate Commerce Act;

It further appearing, That the operation of said Valuation Order No. 26 was suspended pending a determination by this Commission of its jurisdiction over said Valvoline Oil Company as a carrier of oil by pipe line;

And it further appearing, That the Commission has made and filed a report finding that the Valvoline Oil Company [fol. 59] is a common carrier of oil by pipe line and subject to the provisions of the Interstate Commerce Act, which said report is hereby referred to and made a part hereof;

It is ordered, That the suspension of said Valuation Order No. 26 be, and it is hereby, vacated;

And it is further ordered, That said Valvoline Oil Company comply with the provisions of said Valuation Order No. 26 within 90 days from the date of service hereof and as of December 31, 1937.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed September 6, 1938

First Defense

United States of America, defendant in the above entitled cause, for its First Defense to the petition filed therein against it, says:

1. The facts alleged in the petition do not state a cause of action against the United States and are insufficient to entitle the petitioner to the relief prayed.

2. The petition shows on its face that the petitioner is subject to the jurisdiction of the Interstate Commerce Commission and that the order of the Commission, in the manner and form entered, was a lawful exercise of the statutory powers of the Commission.

Wherefore, United States moves that the petition be dismissed and prays that an order be entered accordingly.

Second Defense

United States for its Second Defense to the petition filed therein against it, answers and says:

I

United States admits, for the purposes of this suit, that the facts alleged in section I of the petition are true, except that it denies any intimation thereof that the sole purpose [fol. 61] of petitioner's pipe-line operation is to secure oil for its own manufacturing purposes, and any intimation thereof that petitioner is, in substance, engaged merely in the gathering, refining, manufacturing and marketing of oil.

II

Answering section II of the petition, United States admits, for the purposes of this suit, that the allegations contained therein down to the semi-colon in line four of said paragraph are true. United States admits that the field producing Pennsylvania Grade Crude Oil is served

by the common carrier pipe lines named, but denies that such lines adequately serve the fields served by petitioner or that the service of such lines is reasonably available to the producers served by petitioner. United States admits that petitioner has been operating pipe-lines for over forty-five years, but denies that it operated any of its interstate pipe-lines prior to August 28, 1906. It admits that petitioner's Warren refinery has been shut down since 1932 and that petitioner produces no oil and purports to buy all oil transported by it direct from the producer. However, United States denies each and every other allegation thereof, except that, for lack of sufficient knowledge, it neither admits nor denies the allegations that petitioner has never exercised the right of eminent domain and that its lines are maintained exclusively on private property and private rights of way, and insofar as such allegations may be relevant to the issues in this cause, calls for strict proof of same.

III

Answering section III of the petition, United States admits that the allegations therein contained are true, except that it denies that the petitioner was ordered by the Director of the Bureau of Valuation to make the returns required by Valuation Order No. 26, Revised, and alleges on the contrary that Valuation Order No. 26, Revised, is an [fol. 62] order of the Interstate Commerce Commission as will fully appear by reference thereto, copy thereof being attached to the petition as Exhibit A.

IV

Answering sections IV, V, and VI of the petition, United States admits that the recitals therein are correct, but denies that the statements contained in Section IV and Section VI as to the contents of the reports of the Interstate Commerce Commission are full or adequate, and respectfully refers the Court to such reports, copies thereof being attached to the petition as Exhibit C and Exhibit E, respectively, for full information as to the final findings, conclusions and requirements of the Commission in the premises.

V

(a) Answering section VII and section VIII of the petition, United States says that the allegations thereof are

largely argumentative and conclusory, and therefore, to that extent, require no answer; but if said allegations be held to require answer, United States denies that the order of the Interstate Commerce Commission, here complained of, is arbitrary, erroneous, invalid, or in excess of the statutory powers of the Commission, for the reasons set forth in said sections, or for any of them; and United States denies each and every other allegation of said sections, except it neither denies nor admits the allegation of section VII that there is no written contract or agreement between petitioner and producers for the reason that said allegation is irrelevant but if said allegation be held relevant to the issues in this cause, United States calls for strict proof of same. On the contrary, the United States alleges that petitioner is, by virtue of the provisions of the Hepburn Act, as enacted June 29, 1906 (34 Stat. 584), and as amended by section 400 of the Transportation Act of 1920 (41 Stat. 474), U. S. C. Title 49, Sec. 1, subject to the requirements of section 19a of the Interstate Commerce [fol. 63] Act, U. S. C. Title 49, sec. 19a, and that the order of the Interstate Commerce Commission entered pursuant thereto, and here complained of, is within the statutory powers of the Commission, and in this connection, United States further alleges that petitioner, through its pipe-line department, operates some 1426 miles of pipe-line in the States of Pennsylvania, West Virginia, and Ohio; that approximately 72,000 barrels of oil are thereby transported monthly; that approximately 50 per cent of the oil transported originates in Pennsylvania, 38 per cent in West Virginia, and 12 per cent in Ohio, and that approximately 50% of the oil transported moves across state lines; that these pipe-lines are serving approximately 9020 wells, of which 6,291 are in Pennsylvania, 1370 in West Virginia, and 1,359 in Ohio; that the oil therefrom is collected in approximately 2,600 tanks owned by the producers and located on 2075 farms; that while petitioner serves less than 500 producers or groups, by reason of fractional interests in royalties and leases, it deals with and has accounts with 2,014 royalty owners and 1,751 lease operators for the oil transported; that all of petitioner's investment in its interstate pipe-line operations was made, all of its interstate pipe-lines were laid, and all of its transportation of oil by pipe-line across state lines was commenced subsequent to August

28, 1906; that the owners and operators of the wells served by petitioner in interstate commerce have no other present outlet for their oil, but are served exclusively by petitioner; that the present facilities afforded by pipe-line carriers in the fields served by petitioner, are inadequate to serve such producers, and are not available to such producers; that should petitioner refuse to accept oil from such wells, most of the producers served by petitioner would be deprived of an outlet and market for their oil; that the oil produced by such wells is of a select quality and grade and is superior in value and enjoys a premium in price over the oil commonly produced in such fields; that petitioner refuses to accept oil of a lesser quality or grade, but offers a market to any producer of oil of such quality or grade within a reasonable distance of its lines and not already receiving pipe-line [fol. 64] service; that by virtue of the foregoing, petitioner possesses a virtual monopoly over the fields and wells served by it as aforesaid, and is enabled to and does maintain virtual control over the prices to be paid for the oil produced therein.

(b) United States neither denies nor admits the allegation that petitioner is not now engaged in transporting oil in interstate commerce for other parties than itself or to other destinations than its own refineries, for the reason that said allegation is irrelevant, but if said allegation be held relevant to the issues in this cause, United States calls for strict proof of same. However, United States alleges that in the past, and since the commencement of its interstate pipe-line operations, petitioner has transported oil in interstate commerce for parties other than itself, and to destinations other than its own refineries, and that its pipe-line system is so laid and arranged that petitioner may readily and conveniently deliver oil transported in interstate commerce to other parties than itself and to other destinations than its own refineries by a mere mechanical re-routing of oil moving through its present lines.

(c) United States alleges that, because of the relationship existing between petitioner and producers, its interstate pipelines serve a substantial public interest; that the service rendered is in substance a transportation service; and that petitioner is, in substance, a common carrier by pipe-line. United States further alleges that if, in fact, petitioner is not now in substance a common carrier in interstate commerce by pipe-line, it readily may and probably will be-

come so due to changes in the supply of oil in the fields reached by its pipe-line system, changes in the service now performed by other pipe-line companies in these fields, and because of other changing circumstances now probable and imminent and beyond the control of petitioner.

VI

Answering section IX of the petition, United States admits that the order of the Interstate Commerce Commission requires compliance within a period of ninety days from the date of service thereof, but denies all other matters, things and conclusions alleged therein.

[fol. 65] VII

Except as herein expressly admitted or otherwise expressly referred to, United States denies allegations of each and every section and subdivision thereof contained in the petition.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and that said petition be dismissed at petitioner's cost.

Elmer B. Collins, Frank Coleman, Special Assistants to the Attorney General. Thurman Arnold, Assistant Attorney General. Charles F. Uhl, United States Attorney.

[fol. 66] *Duly sworn to by Frank Coleman. Jurat omitted in printing.*

[fol. 67] [File endorsement omitted.]

[fol. 68] In United States District Court

[Title omitted]

Intervention of Interstate Commerce Commission—Filed August 19, 1938

To the Honorable Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code (U. S. Code, Title 28, section 45a), we hereby enter the appearance of the Interstate Commerce Commis-

sion as a party defendant, and of ourselves as its counsel, in the above-entitled matter.

Interstate Commerce Commission, by Thomas M. Ross, Attorney. Daniel W. Knowlton, Chief Counsel.

Washington, D. C., August 18, 1938.

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed August 19, 1938

The Interstate Commerce Commission, hereinafter called the Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies contained in the petition herein, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph I of the petition, the Commission admits for the purposes of this suit that the allegations contained therein are true.

[fol. 70]

II

Answering paragraph II of the petition, the Commission admits for the purposes of this suit that the allegations contained therein down to the semicolon in line four of said paragraph are true.

III

Answering paragraph III of the petition, the Commission admits that the allegations therein contained are true, except that it denies that the petitioner was ordered by the Director of the Bureau of Valuation to make the returns required by Valuation Order No. 26, Revised, and alleges on the contrary that Valuation Order No. 26, Revised, is an order of the Interstate Commerce Commission as will fully appear by reference to the same, a copy of which is

attached to the petition as Exhibit A. In this connection the Commission admits and alleges that notice of said order was given to the petitioner by the Director of the Bureau of Valuation in accordance with the provisions of said order.

IV

Answering paragraphs IV to IX, inclusive, and that part of paragraph II not hereinabove admitted, the Commission admits and alleges that by its Division 1 it made the report of February 2, 1937, referred to in paragraph IV, but denies that the statements contained in said paragraph as to the contents of its report are full or adequate, and for full information as to the contents thereof respectfully refers the Court to said report, a copy of which is attached to the petition herein as Exhibit C; that after the issuance [fol. 71] of such report of February 2, 1937, upon petition of the petitioner herein, the Commission reopened the said proceedings for further hearing and reconsideration, and that thereafter the entire Commission, under date of June 6, 1938, after further hearing and upon reconsideration and further argument of the case, made and entered its report and order referred to in paragraph VI, but it denies that the statements contained in such paragraph as to the contents of the said report are full or adequate, and respectfully refers the Court to such report, a copy of which is attached to the petition as Exhibit E, for full information as to the final findings, conclusions and requirements of the Commission in the premises.

The Commission alleges that in the proceedings and prior to the making, entering and serving of the aforesaid report and order of June 6, 1938, the petitioner herein, was accorded a full hearing; that in such hearing a large volume of testimony and other evidence bearing upon the matters covered in said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the petitioner in this suit, whereupon the Commission determined said matters and made and entered its report and order of June 6, 1938, aforesaid; that the Commission's said report and order include the Commission's final findings of fact, its decision, conclusions, order

and requirements in the premises, and that upon the evidence aforesaid, as shown in and by its report, the Commission made its findings and stated the conclusions upon which its order of June 6, 1938, is based.

[fol. 72] The Commission further admits and alleges that the findings and conclusions stated in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in the proceedings aforesaid; that in making said report and order it considered and weighed carefully in the light of its own knowledge and experience each fact, circumstance and condition called to its attention on behalf of the parties in said proceedings by their respective counsel, and that neither said report and order, nor any part thereof, was made or issued either arbitrarily or unjustly, or contrary to law or to the relevant evidence, or without evidence to support it; that in making said report and order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition.

Further answering said paragraphs of the petition, the Commisison denies that its report and order of June 6, 1938, are unlawful or void for any reason whatsoever, and denies that its actions in the premises have resulted or will result in depriving the petitioner of any substantial legal rights, or in any way violate any provisions of the Constitution or of the laws of the United States.

Except as expressly admitted in this answer, the Commission denies the truth of each of and all the allegations contained in the petition insofar as they conflict either with the allegations herein or with either the statements or the conclusions of fact included in said report and order of June 6, 1938.

[fol. 73] All of which matters and things the Commission avers and is ready to maintain and prove as this Honorable Court shall direct, and hereby prays that the petition be dismissed.

Interstate Commerce Commission, by Thomas M. Ross, Attorney. Daniel W. Knowlton, Chief Counsel.

Duly sworn to by Walter M. W. Splawn. Jurat omitted in printing.

[fol. 74] [File endorsement omitted.]

[fol. 75] [File endorsement omitted.]

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO THE PETITION OF THE VALVOLINE OIL COMPANY FOR INJUNCTION TO RESTRAIN THE INTERSTATE COMMERCE COMMISSION—Filed October 8, 1938

The Valvoline Oil Company, Petitioner in the above stated case, by leave of Court and with the consent of Respondent's counsel, hereby amends its original petition filed at the above number by adding thereto the following paragraph:

[fol. 77] Paragraph X

The Interstate Commerce Act as amended, bringing within the provisions of the Act common carrier pipe lines, cannot be made to apply to the Valvoline Oil Company without violating the due process clauses of the Fifth and Fourteenth Amendments of the Constitution. Insofar as the act as amended undertakes to convert a purely private business into a public one it amounts to a taking of property of the company without due process of law and the dedication of private property to a public use without just compensation. The Order of the Interstate Commerce Commission predicated on the act as amended, declaring the Valvoline Oil Company to be a common carrier as defined in the act is, therefore, unconstitutional, illegal and void.

W. D. Brandon, J. Campbell Brandon, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Solicitors for the Petitioner.

[fols. 78-79] *Duly sworn to by C. W. Luton. Jurat omitted in printing.*

[fol. 80] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity. No. 3421

VALVOLINE OIL COMPANY, Petitioner,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Narrative Statement of Evidence Before Interstate Commerce Commission.

Summary of Testimony in Narrative Form

Hearing Held by Examiner M. A. Pattison June 16, 1936

C. W. LUTON, Vice President of the Valvoline Oil Company in charge of the refineries and pipe lines, testified as follows:

That the Valvoline operates pipe lines in the Buckeye district in Ohio, the Eureka district in West Virginia and Western Pennsylvania ending south of the New York State line carrying oil to the refinery at Butler.

[fol. 81] Our refinery is rated at 60,000 to 65,000 barrels per month at East Butler of Pennsylvania select crude oil. We specialized in motor oils for domestic sales and 50% of our specialties are exported to England, Germany and France and practically all over the world. The foreign specifications are more rigid than the domestic market. We have operated pipe lines 40 or 45 years. All one corporation, the Valvoline Oil Company chartered in New Jersey.

If the pipe lines were operated as common carrier it would affect our operation, probably require additional equipment to handle the common run of Pennsylvania crude oil. Our storage at East Butler is 35,000 in four tanks. To take care of oil run in our lines as common carrier would mean considerably larger storage tanks, adding to our filter house equipment to distinguish common crude from oil required to meet specifications set up by foreign markets in industrial fields, air ministry and rigid industrial specifications.

Samples of oil are passed upon in our laboratory and if they meet specifications are approved and wells connected and if not we reject them.

Changes in our plant would be necessary as a common carrier to allow us to segregate the best of our oil. It would mean a new filter house because oil as run by common carrier is inferior grade to Valvoline runs and would possibly mean to revise and enlarge our distillation equip- [fol. 82] ment. As a common carrier we would have to add greatly to our storage in order to handle demands made upon us as common carrier. The expense involved would possibly be $200,000 to $300,000 at the Butler refinery. This does not include changes in the pipe lines. The Warren refinery which is not in operation has about 10,000 barrels storage which is insufficient and would require changes. The capacity of our pipe lines is just sufficient to take care of both plants. We would have to make outside connections for deliveries as common carrier. We have outside connection with Pennsylvania Refining Company where our line passes its plant at Karns City, Pennsylvania. We made this connection to get rid of some excess oil after our Warren plant was shut down. We have a connection at Ohio Valley Refining Company, St. Marys, West Virginia. We put that connection in and are selling about 5,000 barrel- a month. These two companies take care of excess oil that we formerly used at our Warren refinery. We have no connection with common carrier lines and if we had to make other deliveries it would require laying another line.

On cross examination Mr. Luton testified the Valvoline Oil Company was incorporated June 19, 1901. We do not have any lines called trunk lines, they are gathering lines, all small lines. The first lines were laid a good many years ago.

We have physical connection with two lines: one the Pennsylvania Refining Company, Karns City, and the other Ohio Valley Refining Company, St. Marys, West Virginia. [fol. 83] and are making deliveries to both of them. They make same quality of oil. In stating that enlargement of plant and storage capacities is necessary we are assuming that being held a common carrier would necessitate accepting whatever oil was offered us, any oil in the Pennsylvania district. The same is true regarding connections that would be necessary with other pipe lines.

When we test oil our field man brings a sample of a new well on our lines to our laboratory. The laboratory reports whether it is acceptable to the Valvoline and whether the well should be connected. That is the regular routine. In fields we know we do away with it and connect the well. If it is off our line or opening up a new field or sand it is necessary to test it before we accept it. I don't know the extent of rejections. Off hand I know of two rejections. Tests are made daily of runs to the refinery but once a well is connected we have never found it necessary to reject it because it comes from certain sands and is the oil we want. Once we accept a well we don't make any further tests of that well. We have never rejected a well producing the kind of oil we need. All our crude oil in Ohio and West Virginia does not cross state lines. About 5,000 barrels of Buckeye crude moves across Ohio to West Virginia to St. Marys plant and the balance goes to Butler. Oil in our gathering lines in the Eureka district in West Virginia practically all goes across Pennsylvania state line. The volume of delivery to the Pennsylvania refineries is about 15,000 barrels per month. They might average 18,000 barrels. The monthly run in all lines is 72,000 barrels including deliveries to other lines. In winter it is less and in summer more.

[fol. 84] The figures given are based on oil we would have to accept as common carrier that would require additional filtering. It would require additional tankage at the refinery to segregate if possible the better grades for our own use. It would probably necessitate some changes around the distillation equipment such as settling tanks to handle basic sediment, water, etc., and to clean up the crude before it goes to the distillation equipment.

That oil which we would have to handle as a common carrier is now going to refineries which cater mostly to domestic market. It is being handled by pipe lines and routed to refineries where specifications are not so rigid as the foreign markets. At least a part of it would be tendered to our company if we were open to receive all kinds of oil.

The estimates of changes are based on the present capacities and do not include any increase in our lines to carry additional oil. It is only within the present capacity of our lines.

[fol. 85] J. J. DUNLEVY testified that he was in charge of the pipe lines and had been with the Valvoline Oil Company since 1910.

We connect our lines to the producers tanks and run the oil and immediately credit his account for value of oil and pay semi-monthly or immediately if producer desires it. When the tank is full the producer notifies us and our gauger goes to the tank, breaks the seal and runs the oil into the Valvoline lines and makes out a run ticket, his credit for the oil. No oil is stored. At time the oil is run the sale is completed. Producer is credited with amount of oil run at posted price for that day.

A right of way is secured paying the farmer and lay a line to the particular tank to be connected. The company has never exercised the right of eminent domain. All lines are laid by private contract. Our lines start in McKean County, northern part of Pennsylvania, and run through Pennsylvania to West Virginia; then into Ohio.

The system was built up gradually originating in Warren County, Pennsylvania. As they grew they laid lines in Beaver County, Pennsylvania, and delivered tank cars on P. & L. E. R. R. and shipped to Edgewater, New Jersey refinery not now in operation. Never had any pipe line connection to Edgewater. From Beaver County it extended to Washington and Greene Counties, Pennsylvania, and to West Virginia and Ohio. The lines were laid in Beaver [fol. 86] County in 1902 and gradually extended through Pennsylvania. In 1913 they were extended to West Virginia to a point called Cairo. In 1926 or 1928 we purchased the Warner, Quinlan Company including its own small lines and about same time extended into Ohio, the last extension.

Approximately 1537 miles of pipe; 900 miles of 2 inch, 600 miles of 3 inch and 20 miles of 4 inch. Exhibit No. 1 shows the company's system of lines, the heavy lines are 3 inch, the lighter ones 2 inch. Between Claysville and Sugar Grove, Pennsylvania, in the southeastern corner is the 4 inch line; also a small amount of 4 inch between Warren and Tiona. The longest any of the line has been laid is 46 years near Warren.

The larger map, Exhibit No. 2, shows the common carrier lines operating in these districts. The National Transit Company serves the upper part of Pennsylvania down to the Ohio river. Other independent lines are the Ultra Penn which serves a refinery at Bruin; the Bessemer pipe

line which serves Crewe Levick refinery at Titusville; a small line serving the Wilburine Refinery at Reno; another pipe line the United serving the Harry Logan refinery at Warren, and a real small line serving the Daugherty refinery at Petrolia.

The lower end of Pennsylvania is served by the South West Pennsylvania Pipe Lines connected with the National Transit Company but known as separate companies.

In West Virginia the common carrier is the Eureka Pipe Line. There is an independent line, the National Pipe Line, [fol. 87] which gathers oil for the National Oil Company at Marietta that is not shown on the map (Exhibit No. 2). None of the independent lines are shown on the map. Marietta, Ohio, not on the map, is 18 miles below St. Mary's on the Ohio river and north of Parkersburg.

In the Ohio field the common carrier is the Buckeye Pipe Line. Our line extends from West Virginia to Ohio.

These four carriers are known as the Standard Group and have some connection.

The Valvoline lines almost parallel these common carriers and we serve no territory not served by some one of these carriers. Our lines were laid after the common carrier's following into the fields as they were developed. Any producer could get an outlet for his oil through a common carrier within 24 hours if the Valvoline Oil Company refused to take the oil or vice versa. The Valvoline does not go into the Bradford field. The expense of changing connections is borne by the pipe line company.

The company makes no written contracts to purchase oil. The connection to the tank is the only contract and producer can change at any time without notice.

The Valvoline Oil Company does not fix the price but pays the daily posted price for various grades. From Allegheny Butler County line south covering the rest of Pennsylvania, Ohio and West Virginia we pay a premium of 5¢ [fol. 88] per barrel over the posted price and have paid more. We do this because we have to have a certain type of crude oil and it is worth more to us to select that type. Our pump stations are indicated on the map, Exhibit No. 2. Our lines from pumping stations to producers' tanks are mostly 2 inch. The oil is run from the producer's tank to our gathering tank and relayed from station to station to the refinery. Our capacity pumping 24 hours a day is 2500 barrels, not allowing for shutdowns for breaks in lines or

machinery. We have no tank farms. At our relay stations we have sufficient tankage to receive oil and pump oil. We are receiving oil in one tank while we pump oil from another tank. At Cairo, West Virginia, Claysville and Myoma, Pennsylvania, we have what we term large tanks, which have not been used for years and are to be dismantled. In past several years, we have not had much oil to store.

In carrying oil as a common carrier it is necessary to have storage. The common carriers have big oil farms on which they might have 20 or more large tanks of 50,000 to 60,000 barrels or even greater capacity. One at Bear Creek on Allegheny River; one near Cannonsburg and one along the Ohio River and numerous large tank farms between New Matamoras and Marietta.

The Valvoline could not handle any additional oil without additional storage. Our lines are 3 inch and the trunk lines of common carriers are from 3 inches to 12 inches in the vicinity in which we operate. The National Transit Line is 3 inches, 4 inches and 6 inches as shown on the map. From our refinery at Butler the National Transit [fol. 89] has three 6 inch lines paralleling each other.

The Pennsylvania field is a settled field—settled production. It produces from possibly thirty or more various sands. The grades vary considerably from a real light amber to a very dark crude which is an inferior grade. We take only the light amber crude and have many times rejected the darker crude. We have gathered samples in Pennsylvania and West Virginia of crude that was not acceptable to us. In some districts where we have lines they produce oil that we will not accept. There are other districts that we never connected with on account of the low grade of oil. In Warren County our lines run right through the leases where we refused the oil because of its dark color. There are other points where we rejected it.

I have two samples of crude from Ohio that we refused to take, one from Washington County, Ohio; another from Ritchie County, West Virginia; and a third labelled Maxon Carroll District. (Samples were presented to the examiner). No wells have double connection. We do not take oil from any wells connected to common carriers. Our regular payments for oil are twice a month and in some instances at producer's request we pay immediately.

We carry 3802 accounts, 2052 are royalty owners, that is, owners of land from which oil is produced, and 1750

working interests, the owners of the wells. We connect with about 8,000 wells which average less than ⅓ of a [fol. 90] barrel per day. The company's gaugers maintain personal contact with every producer, pumpers and field superintendents. To handle "flush" production would require additional storage. Tanks are just sufficient to receive oil and pump it out. Once we have connected with a well which produces oil of the quality that we desire we handle all of the oil produced, if he wants to give it to us. If Valvoline can't handle the oil the producer connects with the common carrier.

We couldn't handle a situation like the Bradford field where they are "five spotting"; drilling one oil well and surrounding it with four water wells to increase the production.

When the Wilburine refinery at Warren was operating it took 30,000 barrels per month and the Butler refinery took 60,000 barrels per month, and we could just supply our demands. Since the shutdown at Warren we don't reduce our runs because we would lose the producers' good will by culling them off and would be throwing away our investment in lines to those particular customers.

The Wilburine refinery at Warren was shut down in 1932.

Many rejections have been made on account of dark color of oils. The color changes in oil from various sands and the dark oil is difficult to filter. A small quantity of darker oil thrown in with lighter oils darkens it all mush like putting small amount of ink in glass of clear water.

Under cross examination Mr. Dunlevy testified:

That the Valvoline prior to 1906 was operating pipe lines in Pennsylvania. The first extension beyond the state was in 1913.

[fol. 91] In 1929 there was a merger of West Virginia Pipe Lines—the Wilburine Pipe Lines and the Valvoline pipe lines. These were three departments operated under departmental heads and combined as an economy measure. The Wilburine Pipe Lines operated from Butler County north under a manager and office at Warren, Pennsylvania. The Valvoline Pipe Lines, the section of the lines from Butler County to the State line, were managed and had an office in Butler. The West Virginia Pipe Lines, which operated in the States of West Virginia and Ohio had a manager and

office in Pittsburgh. The West Virginia company was separately incorporated and operated in West Virginia, Ohio and Greene County, Pennsylvania. The Valvoline was incorporated in New Jersey. Our rights of way were purchased for cash. The Valvoline owns no wells but buys all its oil. The producers are paid twice a month. The oil we deliver to the Pennsylvania Refining Company and Ohio Valley Refining Company is our own oil. The Valvoline pipe lines are now operated to capacity and could not take more oil without enlarging the capacity of the pipe and the pumping equipment.

Prices are posted on all grades of Pennsylvania oil. The Pennzoil Company posts the price in that vicinity known as National Transit Oil. The South Penn Oil Company posts prices for three other districts. The prices differ according to various districts. Buckeye oil from Macksburg division is the lowest priced Pennsylvania crude. The next price is Eureka; the next the Southwest Pennsylvania oil; the next price is National Transit Oil and the highest is the Bradford pool. Both light and dark oil are produced in these districts. Darkening the light oil makes it more expensive to filter. Production is on the decrease in Pennsylvania with the exception of the Bradford field. About 50% of our [fol. 92] oil is produced in West Virginia and Ohio, 38 per cent in West Virginia and 12 per cent in Ohio. It all moves into Pennsylvania except the 5000 per month sold to Ohio Refining Company at St. Marys.

Our lines are classified as gathering lines. All we handle through our lines is what we gather. Our mains are three inch lines and because of its small capacity we have to have relay stations possibly every 20 or 25 miles.

Any producer anywhere on our lines could change within 24 hours because we parallel other pipe lines. No area is served by the Valvoline that is not within easy reach of some common carrier pipe line. We rarely have any one leaving our lines unless some trouble about time for running oil, etc.

The National Oil Company down the Ohio River, an independent Company, meets our premium price.

At Annisville we still take oil by tank car since our line has been taken up.

At Beach Bottom and Warwood, West Virginia, we haul oil by truck. The same is done in other places to accommodate the producers and keep their good will and not for purpose of getting oil by this expensive method.

The prices we assume are posted by the Standard organizations. Prices are posted by the Oil City Journal and the Pittsburgh papers every day. The statement of the history of the Company is made up of facts and forms used, marked Exhibit No. 3.

[fol. 93] At the Examiner's request Mr. Dunlevy explained the different methods of handling oil by various companies. The Valvoline purchases its oil directly from the producer. The other companies pay the producer and also pay the common carrier a pipeage charge. The common carrier in each case is a separate corporation serving many refineries.

The National Transit Company is one of the Standard Group and owns no refinery. It serves the Pennsylvania Refining Company at Karns City, the Ultra Penn Refining Company at Bruin; the Daugherty Refining Company at Petrolia; the Pennzoil Company at Oil City, and the Emlenton Refining Company at Emlenton, all independent refiners except the Pennzoil which is controlled by Standard Oil.

The independent lines are the Ultra Penn Refining Company, the Bessemer Pipe Lines which serves its parent company, and the Crewe Levick Company at Titusville, all similar to our operations. They do not cross state lines nor are they subject to the State Commission of Pennsylvania. I know of no rules or regulations established by that commission regarding the transportation of oil by pipe lines.

The National Transit for example buys no oil and produces none. It is the same with the other three in the Standard Group—Buckeye, Eureka and Southwest Pennsylvania. The producer signs a contract of sale with a refiner and is paid by the refiner; the pipe line company transports oil to [fol. 94] the refinery but the refiner has no way of getting the oil he buys. He gets what they call "run of line" oil. The oil loses its identity when it enters the common carrier lines.

"Credit balance" means the amount on the books due the producer for oil run. The carrier charges pipeage on the oil and is paid. There is a charge for storage of oil by the common carrier. The producer may have the carrier store his oil for a more advantageous market. Now the common carrier will not run the oil unless the producer has a purchaser. Often the refiner has to hold or store oil until the

refiner needs it. The common carrier had storage for this reason.

Mr. R. P. Vogele testified he was Comptroller of the Valvoline Oil Company and had been with the company five years.

The Valvoline Oil Company was chartered in New Jersey. The application was filed June 19, 1901. It is not incorporated in any other state but is qualified to do business in approximately 26 states in connection with the marketing of lubricating oils.

In Pennsylvania we are qualified to sell and manufacture. In West Virginia we are qualified to gather oil and transport it. In Ohio we both sell and gather oil. In New Jersey there is no manufacturing—just selling. We operate refineries only in Pennsylvania.

[fol. 95] The pipe line is a branch of Valvoline Oil Company. Originally the operation in West Virginia was carried on as a corporation. In 1929 it was dissolved and the pipe lines became a branch of Valvoline Oil Company.

The refineries at Butler and Wilburine at Warren are all combined in Valvoline Oil Company. The company has never filed any tariffs or reports as an utility in any state but it pays the Federal pipeage tax.

Our foreign markets consist of England (Australia), France, Germany, Japan, also Holland, Belgium and other European countries.

Our foreign sales between 1930 and 1935 averaged about 47 per cent of total sales.

Specifications for foreign markets are higher than domestic markets. Valvoline has been in the foreign markets for 35 years. The foreign market is more profitable. Over the last five years we averaged a price of 48 cents a gallon. In domestic markets we received 55 cents which entails sales through distributors and dealers, employing salesmen, paying salaries, commissions and expenses, maintaining warehouse stocks in 26 states, making collections, taxes, etc. The foreign price represents selling price on board at New York, payable in cash on delivery. The company would have had no profit in last six years had it not been for foreign business.

[fol. 96] If we accept oil as common carrier it will eliminate much of our profit and increase refinery cost. It is questionable if we could adhere to our specifications.

The Wilburine Oil Works, a limited partnership, was organized under laws of Pennsylvania. The Wilburine Pipe line was a department of Wilburine Oil Works. The Wilburine Oil Works, Ltd., was a separate organization.

The revenue from transportation of oil as a common carrier would be small. The oil sold to Pennsylvania Refining Company is at a delivered price. Our lines going through to Warren pass the Karns City plant and we deliver it into their plant and it is our property until delivered. We have no rates for transportation nor transportation charges nor schedule of rates. If we are treated as a common carrier, I don't believe that we would have very many receipts from transportation of other people's crude oil. Except in certain cases the same company would necessarily continue to carry practically exclusively its own oil.

Exhibit No. 4, Certificate of Charter of Valvoline Oil Company, offered in evidence.

Our powers to operate in Pennsylvania, West Virginia and Ohio are not in excess of our charter rights. The right of eminent domain has never been exercised, nor has any application been made to exercise such rights. In the State of Pennsylvania we have special powers whereby we are authorized to do business as Valvoline Pipe Lines. We pay the producer with a check that has on it "Valvoline Pipe Lines".

Mr. A. S. Hagan, Chemist for the Valvoline Oil Company since 1923, testified as follows:

I take samples of oil sent in to us to determine color. If oil is up to our standard color we run other tests to determine whether it will fit in with our State Board speci- [fol. 97] fications the amount of semi-refined stock we can obtain from that crude, the color of the semi-refined stock and the various other percentages that come from the crude. Semi-refined stock is the basis of our finished stock, one of the most important components in the lubricating oil set up.

After acceptable in color oil is subject to chemical analysis about two times a year. We have a daily report on crude run through distillation units. It is keeping up to requirements.

We make no tests except in new production. Over past ten years we have had possibly 15 rejections after chemical

analysis of oils satisfactory in color. Our pipe line men are trained to predetermine a lot of colors without the expense of laboratory tests.

Color is very important because it will determine the color in your semi-refined product and in the bright stock and petrolatum. It is not possible for us to meet our specifications if we get semi-refined that is too dark to handle thro our plant. Petrolatum is the heavy grease base for all mineral jellies and vaseline. The dark color will immediately show up in it and the price is determined by the color. The amount of oil that goes through the plant affects the cost. If the oil is dark your filters will not produce so your costs vary depending on the color of the original stock. The witness submitted samples of accepted crude from 1930 [fol. 98] to 1936. These samples obtained by keeping a composite sample for each month and then a composite sample for the year show the acceptable color. One test is to predetermine the length of time required for water to separate from oil. This is important in turbine use; also as a Diesel lubricant which has severe tests which Valvoline oil has met. Among others the British Air Ministry blow test. It is used in other aviation circles.

J. B. Northop, an employee of the Ohio Valley Oil Company at St. Marys, West Virginia, was called and testified as follows:

A common carrier, the Eureka Pipe Line delivers crude to our refinery as we require it which we have purchased on credit balances from the producer. The crude is turned over to us by the producer two a month and we have 30 days to take it out of the line before we have storage charges to pay. We do not require Eureka to store oil for us. Producers sometimes keep their oil in the lines several years before he sells to the refinery to get an increase in price.

The common carrier does not determine the price until the producer disposes of it.

Eureka and Buckeye have large storage in our section. The Buckeye has some 20 tanks storage for approximately 55,000 barrels. On the West Virginia side they [fol. 99] have larger tanks perhaps 100,000 barrels all told. It used to be that producer could run his oil and common

carrier would store it. Now the common carrier won't accept the oil unless the producer has a buyer for it but still some crude is accepted on old basis and stored.

The common carrier holds the crude for the convenience of the refiner. We require from 5,000 to 30,000 barrels delivered as we need it. This saves storage at the refinery. This is the common practice in the smaller plants. We get our crude from the Eureka, one of the Standard Group.

The Eureka has two 6 inch lines running into our plants and deliver oil to us under published rates. The purchaser has 30 days to get his oil out of the lines after purchase.

We do not get the oil we buy. We get the average pipe line delivery, the average from the field drawn from a common stock of storage. We have no way to specify a particular grade and I doubt if they would accept an order with a specification in it. It would be impossible for the common carrier to handle.

[fol. 100] Mr. G. M. Kirkwood, an employee of the Pennsylvania Refining Company, Karns City, Pennsylvania, testified as follows:

We purchase oil delivered by the National Transit Company. We also purchase some surplus oil from the Valvoline. The Valvoline crude is freer from sediment and water than the pipe line crude we get from National Transit. We have several cases of emergency shut downs due to dirty oil. The oil itself was a good quality and grade but contained a large amount of B. S. (basic sediment) and water that caused an immediate shut down of the plant. If we catch it in time it would settle out. It involves expenses of cleaning the tanks.

If a different type of B. S. more of a floating type gets through the settling tanks it collects on tubes and rises from them to such an extent that you have to shut down and clean out the tubes particularly in winter. Twice in five years we have had that experience necessitating a shut down. We call for oil as quickly as we can because oil is a little scarce. Back a few years we carried as high as 30,000 barrels for two or three months.

The National Transit has large storage. The Bear Creek tank farm is the only one I know of though they have a good

bit more. It is always desirable to have light color crude because it costs less to bleach it. The bleaching process is [fol. 101] the most expensive single process in the manufacture of motor oil. It is largely done by filtering. It is also true with other products particularly petrolatum. The lighter grades are considerably more valuable than the darker grades. The Valvoline crude is consistently lighter in color than regular pipe line crude and less expensive to bring to marketable products.

The storage of 30,000 barrels for two or three months was because we were not in a position to take it. The common carrier was anxious for us to take it but did not insist on it. What the common carrier would do necessarily depends on its storage capacity. We carry 15,000 barrels storage which is a ten days supply and the Valvoline has practically the same storage.

[fol. 102] Hearing on November 9, 1937, before Examiner J. Paul Kelley, on a petition for rehearing to permit the introduction of evidence concerning changes in the conditions of operation.

J. J. Duxlevy, a previous witness, testified further as follows:

There has been some change in the operation particularly concerning the sales of excess oil since the shut down of the Warren refinery. A small portion of the crude in Ohio was shipped over the state line and delivered to the Ohio Valley Refining Company at St. Marys, West Virginia. Exhibit No. 5 is a comparison showing the amount of crude oil transported over a state line and sold to outsiders together with the amount of oil gathered in pipe lines. The shipment of this Ohio oil across the river to St. Marys, West Virginia, has been discontinued to avoid any question of our status as a common carrier. This change was made in May, 1937. This Exhibit No. 5 shows the date we began transporting or selling Ohio oil to the Ohio Valley Refining Company at St. Marys, West Virginia. The first sale of this oil was made in April, 1934, and continued to May, 1937, when it was discontinued. This exhibit shows that the amount of sales over the state line to an outside refinery comprises [fol. 103] only 3.78% of the total amount of oil the company handles. This method of delivering was a matter of con-

venience to us for the simple reason that the oil was gathered directly across the Ohio River in the State of Ohio and was pumped into the St. Marys plant. Since May, 1937, all sales made to the Ohio Valley Refining Company plant have been of crude oil produced in the State of West Virginia and amounts to approximately 5,000 barrels a month. We gather approximately 36,000 barrels a month in that neighborhood in West Virginia and are continuing these sales. The balance of this oil is taken to our Butler refinery through our pipe lines and the Ohio oil is pumped through our pipe lines to the Butler refinery. There is no sale of crude oil from the Butler refinery to outside sources. We sell now approximately 5,000 barrels a month to the Pennsylvania Refining Company at Karns City. This oil is gathered in Pennsylvania north of the Karns City plant and our pipe line runs right through the Karns City plant and it is a mere matter of delivering it in their tanks on the way down to our Butler refinery, and the oil from the north proceeds south to the plant at Butler. All the oil that comes to the Butler refinery is converted into manufactured products. The Pennsylvania Refining Company at Karns City does not get any oil produced outside of Pennsylvania. The only oil that is transported across state lines that is sold is that [fol. 104] shown in Exhibit 5 during the period from April, 1934, to May, 1937. All the oil gathered in northwestern Pennsylvania is shipped south to our Butler refinery except the oil which is delivered to Karns City on its way south. To get any other oil to Karns City from the south or from the Butler Refinery would mean reversing the pumping, and since the Warren shut down no oil has been pumped to the north and none of the oil is pumped south from the Butler plant into West Virginia. Our lines are not equipped to pump oil that way. There has been no change in the arrangement at Karns City since the last hearing.

When the operations were discontinued in 1932 at the Warren plant they took approximately 30,000 barrels a month and we had production on our lines to furnish that amount, but since that time production has gradually decreased and our Butler refinery is taking a little more and today our excess over our requirements at our Butler refinery are in the neighborhood of about 2,000 barrels a month. Our production is constantly declining, and in order to keep the production up it is necessary from time to time to connect up a little more wherever we can. The amount of

oil we use at the Butler plant is increasing so that the amount of excess oil to be disposed of is decreasing. The St. Marys refinery capacity is about 60,000 barrels and we furnish approximately 5,000 barrels per month or about 8.5% of their total capacity and the balance of their oil they get from [fol. 105] common carriers. The Eureka Pipe Line is connected directly with the St. Marys plant. The Pennsylvania Refining Company refinery at Karns City has a capacity of approximately 60,000 barrels and we furnish about the same 8.5%. The Pennsylvania refinery get the bulk of its supply from the National Transit pipe lines. These are the only two places that we are selling oil now and these both started after the Warren plant was shut down. The St. Marys started in April, 1932, and Karns City started in April, 1933. The Warren plant was shut down in the spring of 1932.

Exhibit No. 6 is a map of the Valvoline pipe lines showing the growth of the pipe lines. The growth of the pipe lines was haphazard and no records were kept of the lines, where they cross, or in fact where they are laid. The legend on the map marks the pipe lines as they are installed and is taken from records or from information showing construction work. The pipe lines originated in Warren County between Warren, Tiona and Donaldson in 1892. It is the most northerly part of our line. Oil was gathered in this line and loaded in tank cars and shipped to our refinery at Edgewater, New Jersey, until 1900, and in 1901 the Warren plant was built and operated. There never was any pipe line connection to Edgewater, New Jersey. All shipments were by rail. All extensions are to the south gradually through the oil fields toward Butler. In 1909 the Butler [fol. 106] plant was operated and the oil lines were then extended down in through Pennsylvania to gather oil to supply the new Butler plant and to continue the supply to the Warren plant.

Exhibit No. 7, identified by Mr. Dunlevy, shows by years the total purchases of crude by the Valvoline down to and including 1936. In the five years from 1926 to 1930 it shows the largest production which the Valvoline purchased. This was occasioned by the last major extension in the pipe-lines in 1926 when lines were laid into southeastern Ohio. The production has been steadily decreasing since the lines were laid. This is true of all Pennsylvania wells.

Exhibit No. 8, a map in color showing the various pipe lines operating in the field in which the Valvoline operates.

was identified by Mr. Dunlevy. This map shows, so far as we know, all of the pipe lines which are operating in the same territory as the Valvoline. In addition to the other lines which are in color the black lines designate the Valvoline lines. The large dots show the location of pump stations along the Valvoline lines. These pipe lines are not all common carriers. The common carrier lines operating in that district are the National Transit, Southwest Pennsylvania Pipe Line, Eureka Pipe Line Company and Buckeye Pipe Line Company. The others are small, independent [fol. 107] lines serving refineries.

Exhibit No. 9, which is a list of producers' tanks not connected by pipe line, was identified by Mr. Dunlevy. This list shows crude oil that is hauled by truck and in other instances by tank cars. Some of this oil goes direct to our refinery and when it is too far away is delivered to our nearest tank on the gathering lines and then transported by pipe line to our refinery. This list gives the places where we haul oil by truck or tank car. They are very small operations and it is not much more than a matter of convenience to producers.

Exhibit No. 10, a statement of the average daily amount of oil run by states and counties. This list shows the correct number of wells from which we gather oil to this date as 9,020. The average in barrels from each well is .26 of a barrel. We have very few wells making five barrels, not more than two or three on the whole system and this is flush production which eventually reduces itself to very small pumping operation and these larger wells are all included to get the average of .26 barrel per well.

Exhibit No. 11, identified by Mr. Dunlevy, is a statement of the gathering tanks run infrequently by the Valvoline. On the last page of the exhibit is a summary showing that there are 28 tanks which are connected to the Valvoline lines that have only been run once in the last four years, and the total number of barrels run in the four years was 1394.33 [fol. 108] making the average run per year from these 28 tanks of 348.58 barrels. These tanks are at stripper wells which producer does not abandon and we have our pipe lines connected to them for years and we maintain the pipe lines to run this oil which is all that they produce. Our line is the only connection to the tank. No other pipe line is connected to it. We have no connection with any tanks that are also connected to a common carrier. We

would not connect where a common carrier has a connection nor would the common carrier connect where we have a connection. The common carrier in this field where there is not sufficient production to warrant the maintenance of a pipe line removes its line and the producer is without an outlet for his oil. In one instance producers on the Mercer-Lawrence County line in Pennsylvania where the common carrier line was removed and we took care of their oil which is now being hauled to our plant at Butler by truck. It is understood that in order to get the common carrier to connect to a producer's tank that he must have five barrels per day per mile; that is, if a producer has less than five barrels and is a distance of a mile away from the nearest pipe line of the common carrier they will not lay a pipe line to his well. This refers to miles of extension of the line.

[fol. 109] Exhibit No. 12, identified by Mr. Dunlevy, is a cross section of tanks run from various wells illustrating distribution of interests. In the exhibit the letter "R" indicates a royalty interest or the farm owner's interest. The letter "W" indicates a working interest or the lease operator or owner's interest. The royalty interest is with very few exceptions 1/8 of the oil produced. The working interest is carried as an entirety, 8/8, and divided accordingly. At the time of the other hearing there were 3802 different accounts of land owners and producers. This number varies slightly. At present there ars 3765 accounts. 2014 of these accounts are royalty owners accounts and 1751 are working interest accounts. A large number of royalty accounts is often occasioned when the original owner dies and it is distributed among his heirs and these heirs die and it is redistributed, and the Valvoline is forced to pay them their proportionate share of the amount of the oil run. The Valvoline is forced to carry very small fractional interests in the royalty accounts. The witness referred to page 3 of the exhibit and the third item on the page. Tank No. 5979 on the Smithers Farm, in Doddridge County, West Virginia. In this account R. D. Smith gets 1/352 royalty which represents .45 of a barrel run to the credit of his account during the year 1936. Sina E. Shinn gets 15/1408 which represents 1.7 barrels run to her credit during that year. There are many such similar instances.

[fol. 110] All of these fractional interests are carried as

separate accounts. Checks are actually issued together with statements to each of these individuals. The practice is to submit a division order to the Valvoline with the interest of the individual owners. An instance of the small fractional parts in the working interest is given on page 4, Tank 2070, the second tank on the page, Glass in Ritchie County, West Virginia. D. F. Rinehart has a fractional interest of 899/1024. There is an average of approximately eight accounts to each lease including both working and royalty interests. This divided into the total number of accounts would mean that there are approximately 470 units that are served by our lines, so that we are actually serving less than 500 different producers or groups. One person usually operates the lease and furnishes us with division orders showing the various subdivisions and we do all our business with this one man, but it is necessary to split the account as designated by the division order filed with us. This is done to accommodate the producer and because he requires us to do it, and to get his oil we practically have to do what he tells us to do. It is done for their accommodation and the producers and royalty owners make us do their bookkeeping rather than have the oil run into one account as has been shown by these examples. [fol. 111] Exhibit No. 13 shows a list of tanks connected and disconnected during a two-year period identified by Mr. Dunlevy. This list shows a total of 144 new tanks connected. These tanks are in the vicinity of our pipe lines and new wells coming in from time to time which are connected with our lines. This means that the gathering lines are laid to these tanks which are owned by the producers. A producer gathers his oil into his own tanks and we connect to the producers' tanks and not to the wells. Our gauger gages this producer's tank and then runs the oil in the Valvoline's line, makes out a gauge ticket and gives it to the producer and it is on these tickets that the payments are based. This oil is run at the producer's request. Each farm has its own gathering tank so that the farm owner will get his proportionate share of the oil produced from his farm, and the Valvoline lines connect with this tank. These farms will be anywhere from 20 acres to 100 or 200 acres. The list showing the tanks disconnected is where the producers abandon the wells and we disconnect from the tank and take up our line. When we lose a producer as in an instance in Greene County, Pennsyl-

vania, where the production was turned over to a common carrier, we then take up our line because it is of no more value to us in that district. This exhibit shows 128 tanks abandoned by producers. It also shows 38 tanks lost to common carriers. This is the instance referred to in Greene County where these tanks were lost from our lines.

[fol. 112] Exhibit No. 14, giving a list of the names of farms and number of tanks to which the Valvoline is connected. The total number of producers to which we are connected is 2678 as of September 30, 1937. These producers' tanks are located on 2075 different farms. The capacity of these tanks ranges from 5 barrels to 250 barrels. Some very few 250 barrel tanks are located in West Virginia. What is usually known as a tank in the field is a thirty barrel tank. On page 20 of the exhibit is a list of the number of leases on which there are five or more tanks. There are 70 leases operating 838 farms on which there are 1201 tanks. 70 leases is considered as 70 units or producers but it does not mean 70 accounts. There would be a great many more accounts.

Exhibit No. 15 shows the total pipe line mileage and crude oil transported by various companies in the territory as compared with the Valvoline Oil Company as identified by Mr. Dunlevy. This exhibit is made up from the Interstate Commerce Commission annual report for the year 1936 for the companies reporting to them and from our own records for our own information. The chart or graph on page 6 of this exhibit shows the percentage of lines owned by the seven companies including the Valvoline. 68% of the Valvoline lines are 2 inch lines. 30% of the Valvoline lines are 3 inch lines. 2% of the Valvoline lines are 4 inch lines. 56% of the 7 companies' lines are 2 inch [fol. 113] lines; 21% three inch lines; 11% four inch lines; 8% six inch lines. The trunk lines are also indicated. 53% of 7 companies' trunk lines are 6 inch lines. 2% are 7 inch lines; 38% are 8 inch lines; 1% ten inch line. The capacity of a 2 inch line is 20.52 barrels per minute; the three inch line is 46.16 barrels per minute. The Valvoline has a small portion of 4 inch line in Washington County that connects up to 3 inch lines which practically gives a three inch line because there is a 3 inch line coming into the 4 inch and a 3 inch line going out of the 4 inch, and it would not be possible with that connection to carry the capacity

of a 4 inch line. Our lines are 2 inch and 3 inch with the exception of a small amount of 4 inch. An 8 inch line which seems to be what is used for transporting large volumes of crude oil by common carriers is sixteen times the capacity of a 2 inch line.

Exhibit No. 16 marked "Crude Oil Tanks and Capacities Owned by the Valvoline" was identified by Mr. Dunlevy. The total capacity of the tanks is 378,475 barrels. These tanks are located at our gathering line stations and relay stations as incidental to pipe line operations. None of them are set apart for the storage of oil other than oil in transit. We have no tankage for the storage of oil. We [fol. 114] never store oil. We just move it along to our refineries as we get it. We have three 20,000 barrel tanks and one 15,000 barrel tank at different points on our system, but these tanks have been marked as used only as receiving tanks. These tanks have been installed in the system for many years and one 20,000 barrel tank at Myoma could be abandoned entirely. It was originally constructed for relaying oil and since the change in our pipe line it is not now operated and is used only for receiving a small amount of oil gathered around Myoma. The same is true of Claysville where the tank was also used as a relay station. The tank at Cairo, West Virginia, was acquired in 1925 when we purchased the Warner Quinlan property and is used only as a receiving tank. There is never over 500 to 1,000 barrels of oil in that tank at any time. The tanks at the refinery on the first part are marked at Noeline. At the former hearing I testified that the tank capacity at the refinery was 35,000 barrels but I forgot a 30,000 barrel tank which we had up the valley because we hadn't used it for so long. These tanks are used in our ordinary operations. We do not have any units of storage like tank farms or anything like that separate from our pumping. There are very few tanks at each location and they are of small capacity. The pipe line report which refers to our storage as 300,000 or a little over 300,000 referring to the report on pipe lines, the Splawn Report, House Report No. 2192, Seventy-second Congress, in Part I, page 373, where it gives a total ca- [fol. 115] pacity of the Valvoline as 307,674 barrels of storage, that is the same item as is covered by Exhibit 16 which is correct as of a later date.

Under cross examination Mr. Dunlevy testified as follows:

In the sale of excess oil to the other refining companies there was no transportation charge. It is shown as one price, so many barrels at so many dollars per barrel. The cost of transportation is not shown on the invoice. We show it at one price. It would be just a figure cost because there are so many angles that are involved where the oil comes from that it is difficult to figure the cost. It is a comparable charge to what they would have to pay for oil some place else. You don't figure in that cost. It is just a comparable cost to what they would have to pay for it in other markets. Referring to the pipe line map, Exhibit No. 6, it is a fact that it was well after 1906, the date of the Pipe Line Amendment, that the company's lines crossed state lines. Prior to that time the Valvoline did no interstate business. The first extension was a small line just over the Pennsylvania State line to Hollidays Cove, West Virginia, in 1911 which was right in the Kendall field which is in Pennsylvania but the State Line cut through there. In Exhibit 6 it appears that St. Mary is at the tail end of one of our lines. The oil from Ohio is collected in a tank at [fol. 116] Bens Run, West Virginia, and we have more than one tank there. We pump from Big Moses to Sugar Creek to Bens Run, West Virginia, and then into St. Mary's. The Ohio oil is held in Ohio until that operation is finished and then pumped through and mixed with West Virginia oil and then with the Pennsylvania oil as it comes into our plant as it is gathered along the line. This change in the operation was made in May of 1937 to avoid bringing Ohio oil into West Virginia for delivery to the refinery at St. Mary's. Our pipe lines cross the Ohio River at Bens Run. The same pipes are used to bring the Ohio oil to our refinery at Butler. The Ohio oil is mixed with oil gathered in West Virginia and then mixed with oil gathered in Pennsylvania and all pumped through to Butler. The oil now delivered to St. Mary's is surplus West Virginia oil and is assembled at Big Moses, Sugar Creek and Bens Run. There has been no change in the transportation of crude oil over state lines for our own use between the time of the last hearing and the present time.

When our gauger runs the oil from the producer's tank that is the time the price is fixed and that is the amount we pay. It is entered that day so that the Valvoline actu-

ally purchases the oil on the day on which the tank is run and the run ticket issued. Very often these producers take run tickets right into our office and get payments the same [fol. 117] day. When our gauger breaks the seal on the tank it becomes our oil whether it goes into the pipe line or onto the ground. We have never been asked to supply information, tariff or rates or anything else and we never furnished any and never had any. Our lines are just the department carrying the oil to the refinery, and the cost of transportation of the oil on the books of the Valvoline is just one of the costs of production of the manufactured product. We have no way of computing actually any expense or cost for carrying oil that we sell to refineries. They have never asked for anything like that. The price we make is comparable to what they would have to pay for it if they bought from somebody else. I don't suppose we could profitably transport the very small quantities of oil which the common carrier refuses to transport. We are in competition with these other buyers all the time and we bend over backwards, in other words, to do things to get this oil that ordinarily you would not be expected to do. Our lines have been laid for years and years and they are laying there and connected with the producer, and if we disconnect from him we lose his good will and possibly the good will of others if the word were passed around throughout the field that the Valvoline had let the producer stick without any way of getting to market. We can't afford to do it because in order to get this type of oil we have to keep the good will of our producers and keep them satisfied. [fol. 118] If these small items of oil are transported at a loss, that loss on the books of the company would be considered just as a manufacturing loss as the pipe lines are just a part of our system. We do not get our profit from transporting oil but we get it from the sale of the manufactured product. The pipe lines are just a department of the Valvoline Oil Company and these records we do not have at our disposal.

Mr. C. W. Luton, Vice President of the Valvoline Oil Company, who had testified previously, was recalled at this hearing and testified as follows:

I am Vice President in charge of refineries and pipe lines. After the Warren refinery shut down I made an arrange-

ment with the Pennsylvania Refining Company to take the excess crude and this arrangement has continued since the shut down. We have practically no excess crude at the present time. The only reason why we are delivering to the Pennsylvania Refining Company was at the time we asked them to give us a lift in order to help us out, you might call it a neighborly act, we entered into a contract to take care of that excess crude until such time that we either started our own refinery or could take up the slack at the Butler plant. That contract expires next spring and [fol. 119] at that time we expect to bring that crude into the Butler plant and refine it there. It was a matter of accommodation on their part. They released some of the common carrier crude in order to help us out at that time, and at our request.

We run our refineries on what we call a selected type of crude running from light amber color to an amber, and while there are any number of operations in our pipe line department that are not profitable, we continue to serve those outlying districts where the stripper wells are very small because if they were disconnected they would have no place *of* sell their oil. No other company would come in and connect to them because it would not pay as carriers to make the connection. Inasmuch as we have the connections and have had at one time gathered a lot of oil from these producers we continued to serve them at what we know is a loss. Then other times when some of these outlying stripper wells owned by particular producers having producing wells in more prolific fields and if we get the bad will or the ill will of some of these producers who owned in both fields and eliminate one we would possibly create a feeling that we would lose them in the other field, and that word would travel along and in no time at all we [fol. 120] would lose considerable of our production. The Pipe Line Department of the Valvoline Oil Company is not operated at a profit. It is operated as an auxiliary to furnish our refinery with crude and we try to make our profit in the sale of our materials. Light amber is a definite designation of oil in the industry and is the grade of crude which we have carried and continue to carry for a number of years. Black crude which we do not take is produced in this field. It contains a considerable amount of asphalt, very difficult to refine, very expensive to refine, and the specifications in the production of this particular grade of crude are very

inferior to the type that we gather. If the Valvoline was declared to be a common carrier and required to file reports it would be a terrible handicap because of our old equipment and the antiquated type of machinery and pipe that we use. It would be almost an impossibility to meet the requirements of the commission so far as to records and maps that they require and the type of bookkeeping. It would mean a terrific expense to gather this information in order to make the reports to the Commission. We have some records that would be available to the Commission but it would be a terrific job to get all the information. If the Valvoline is declared to be a common carrier it would be compelled to release any number of these stripper wells [fol. 121] that we are hooked up to now that we know are not a profitable operation. We could not carry them on. There has never been any request for transportation of oil or any other kind of service from our company. With our present setup we could transport very little other oil if we continue to supply crude to our own refinery. At the present time we are running approximately 72,000 to 75,000 barrels. We require all that for ourselves and we have a total run capacity of approximately 90,000 barrels. Other oil would have to be transported at our convenience in order to keep our refineries operating. These figures on capacity are per month.

[fol. 122] EXHIBIT No. 3

Witness Dunlevy

History of Valvoline Pipe Lines

The history of the Valvoline Oil Company stretches back through the years to the beginning of commercial petroleum refining. In 1868 Leonard and Ellis organized a partnership in Brooklyn and commenced the refining of crude oil. This partnership continued until 1901, when the Valvoline Oil Company was reorganized under the laws of the State of New Jersey.

From the beginning down until 1930, when he relinquished active control, W. Dixon Ellis was the company's guiding genius, devoting his entire business career to the refinery business. Mr. Ellis exercised the closest personal supervision in every department of the Valvoline business,

from the purchase of crude oil at the producer's well to the sale of the finished product in domestic and foreign markets.

Experimental plants at several points preceded construction of the firm's first commercial refinery at Edgewater, New Jersey. The Edgewater plant received its crude supply in tank cars from the Pennsylvania field in which at an early date Leonard and Ellis operated several small pipe line gathering systems. The Edgewater refinery was never connected by pipe line. Crude oil was still shipped to that point long after the other two Valvoline refineries were in operation at Butler and Warren, Pennsylvania.

The Warren refinery, known for many years under the name Wilburine Oil Works, was constructed in 1890. The nucleus of the present pipe line system originated in the oil fields around Warren. The antiquity of that section of the pipe line system which serves the Warren plant is evident from the fact that even before 1890 many of the field lines were already in the ground.

The Vavoline pipe line system was extended gradually South and Southwest from the Warren, Tiona and Donaldson district, following the general trend of discovery in the Pennsylvania field. Several detached gathering systems were operated South of Butler some time before the third Valvoline refinery was constructed at that point.

When the Butler plant was added in 1908-1909, the loose ends of the pipe line system were tied into the line which was then extended northward from Shannopin to Butler and from Emlenton South to Butler. About the same time, the company extended its line southward through Burgettstown, Claysville and Sugar Grove into West Virginia, where several newly developed pools offered an additional supply [fol. 123] of high grade oil.

Valvoline entered the Ohio field in 1916, laying a system of gathering lines along the Ohio River in Monroe and Washington counties. Soon afterward these lines were connected with the line at Sugar Grove, Pennsylvania.

In May, 1925, Valvoline purchased the West Virginia properties of Warner-Quinlan. This purchase involved a small and rather antiquated topping plant at Cairo and a gathering system serving nearby pools in Ritchie County. The refinery proved of little use to the Valvoline Company. It was dismantled and the tanks and other usable equipment were shipped to Edgewater. The Warner-Quinlan

gathering system, however, served to round out the Valvoline properties in West Virginia, and provided an additional supply of about 400 barrels daily. This extension was the last major addition to the Valvoline company's pipe line system.

Until very recent years the refining and pipe line properties of Vavoline Oil Company were operated as several separate divisions, each with its own management and accounting.

The Warren refinery was incorporated as a separate subsidiary, operating under the title Wilburine Oil Works, Ltd. That section of the pipe line which directly served this refinery was called Wilburine Pipe Lines. Wilburine Pipe Lines was not incorporated, being merely a department under the control of the Warren refinery.

The Butler refinery was operated as Valvoline Oil Works, Ltd. The section of the line between Shannopin on the South and Tionesta on the North was under the jurisdiction of Valvoline Oil Works and was known as Valvoline Pipe Lines.

When its line entered West Virginia the section of the line within that state became West Virginia Pipe Lines.

It is difficult to say just what useful purpose was served by such a division of the refining and pipe line properties. The business of purchasing crude was greatly complicated by reason of the fact that each division carried its own accounts. The overhead expense of manufacturing operations certainly was not lessened by this arrangement. The Wilburine division maintained separate refinery and pipe line offices at Warren. The Valvoline division had offices at Butler, while the West Virginia Pipe Lines had headquarters in Pittsburgh.

In 1925 Valvoline Oil Company absorbed Wilburine Oil Works, Ltd. and Valvoline Oil Works, Ltd. and the refining division thereafter was brought under one central management.

[fol. 124] In 1927 West Virginia Pipe Lines was taken in by the parent company. The Pittsburgh office was closed and the pipe line office at Warren was moved to Butler. In this way the three pipe line divisions lost their *d*eparate identities. All the pipe line properties of the company are now operated as Valvoline Pipe Lines and the crude oil is purchased and sold under that title.

In September, 1929, Mr. Ellis sold control of Valvoline Oil Company to Paragon Refining Company. Shortly after Paragon Refining Company acquired Valvoline, Paragon in turn was purchased by Gulf Oil Corporation, and the Paragon Company was dissolved.

At the time of this dissolution Mr. E. W. Edwards, former president of Paragon, offered to take over the Valvoline stock, and control of Valvoline Oil Company passed to the Edwards interests, the present owners.

The only addition of consequence to the Valvoline properties undertaken thus far by the new management was purchase of certain assets of Galena Oil Corporation. In the sale of the Galena properties to various other companies, Valvoline in September 1931 acquired a grease plant at Franklin, Pennsylvania, and a group of retail and bulk stations in and around Akron, Ohio.

Examination of Valvoline's past and present business by an outsider leaves the impression that its founder, Mr. W. Dixon Ellis, must have been something of an idealist. During the many years of his active management, he refused to be led even momentarily from his chosen field. To him the advent of the automobile meant nothing but expanding markets for his lubricants. He would have nothing to do with gasoline. This was probably the main reason why the Valvoline stayed out of large scale retail distribution. It is also somewhat remarkable that the company was able to avoid participation in the producing branch of the industry; especially when it is remembered that Valvoline was actively engaged in the pipe line business all during the discovery years in the Appalachian field.

It is said of Mr. Ellis that he was almost convinced that first class lubricating oils could hardly be manufactured from anything but Pennsylvania crude. Certainly, he never seriously considered anything but Pennsylvania or Appalachian crude for his own refineries. His fixed ideal was quality rather than quantity.

[fol. 125] This reluctance to deviate at any time from the rigid policies laid down for the Valvoline in its early years quite naturally has limited its growth. For the Valvoline Oil Company, this extreme conservatism in the end has perhaps been a fortunate thing. It has enabled its former owners to pass on a closely held ownership, a small but

compact field organization, a long established market, and an enviable reputation for high quality products.

Approximately 40 per cent, of the company's present production of lubricating oils, waxes, greases and petrolatum is sold abroad and 60 per cent. is sold in the United States and Canada.

Practically all of the major pipe line systems of the United States, with the exception of possibly three or four of the very oldest eastern oil carriers, of which Valvoline is one, were conceived in their entirety and were constructed as planned. Of course, alterations and extensions are made now and then to every pipe line system, but the builders of a pipe line, in advance of construction, usually know about what their system will be when completed. Ordinarily a pipe line is not the sort of project that can be successfully undertaken without some very definite idea as to where it is to begin and where it is to end. The most economical route to follow between field and market is delineated exactly before construction is started. Every pipe line system, even the largest, constructed during recent years has been carried through to completion within eighteen months from the time its route was first surveyed. On the modern pipe line, every station site is selected with reference to some other station site. Allowance is made for possible extensions. Every phase of operation depends upon a coordinated relation with every other phase.

In contradistinction to all this, the Valvoline was put together a little at a time. Many important oil discoveries came years after the first little Valvoline gathering systems were laid, and the main line continued to reach out after new oil. Station sites were selected by Mr. Ellis personally and apparently with scant regard for possible future extensions, and in some cases, with little consideration for other stations in existence at the time. Here and there, gathering lines duplicate each other. In some places, with little expense, a pressure line could be converted to a gravity line. The line occasionally goes up the hill where it should go down the valley. With the sole exception of Valvoline's main line pumps, the equipment follows no general pattern. Much of it is a hodge-podge of all the pipe line equipment evolved by the trade during the past forty or fifty years. The Valvoline line has never been surveyed and it is small wonder that a system as complex as Valvoline, laid without recourse to correct engineering data, should exhibit such [fol. 126] faults. In short, what we have to consider here,

from the physical standpoint, is a Nineteenth Century enterprise transferred to the Twentieth Century, reflecting the best there was in the days before pipe lining became an exact science, and surviving the ravages of time surprisingly well.

On the other hand, good management together with many unique operating practices and operating economies have been made to compensate to some extent for faulty engineering and obsolete equipment.

Pipe Line Map

No accurate or complete maps of the pipe lines and gathering lines has ever been kept by the company. A map has recently been made up by gathering together the data in the various fields and indicating the company's lines.

The Valvoline Pipe Line system has many of the features common to the older pipe lines of the Appalachian field, but in many other ways it is unique. In every respect it is different from any pipe line ever operated in the Mid-Continent field. Because Valvoline has no counterpart it is somewhat difficult to describe it in the conventional pipe line terms. Under these circumstances, the pipe line map takes on new interest and will serve to clarify any deficiencies in the verbal description.

The map shows the principal features of the system, including the line itself, size of pipe, direction of oil movement, stations, gathering stations, connections with other refineries and pipe lines, etc. A more accurate map could only be made by an actual survey of the line.

[fol. 127]

The Line

General Extent

The line extends from Warren south and southwest, traversing the heart of the Pennsylvania field. The section within the state of Pennsylvania passes through or near the following cities and towns:

Warren, Tiona, Tionesta, Emlenton, Butler, Ambridge, Shannopin, Burgettstown, Claysville and Sugar Grove.

At Sugar Grove Station the main line is intersected by a long, rambling 2″ lateral coming in from New Matamoras, Ohio. This lateral transports to the main line only a part of the Ohio crude, the remainder being received through a 3″ branch of the West Virginia system.

The main line continuing south from Sugar Grove Station, enters West Virginia at a point just east of the southwest corner of Pennsylvania. The West Virginia section extends down through Wetzel, Tyler and Ritchie counties, with branch lines into Monongalia, Marion, Dodridge, Pleasants, Wirt and Calhoun counties. The Valvoline system in West Virginia extends across a large portion of the oil producing section of that state, terminating with the former Warner-Quinlan gathering system in Ritchie, Wirt and Calhoun counties.

The accompanying map of the line shows more clearly than could any verbal description its geographical extent and its general position with reference to the principal cities, towns and rivers of the Appalachian field.

Size of Pipe

Throughout most of its length the line is 3″ pipe. Some of the laterals and secondary lines are 3″, some are 2″ and a few are combination 3″ and 2″. Practically all of the field gathering lines are 2″.

The section of the line between one mile south of Claysville Station and Bergettstown is single 4″. Donaldson to Saybrook single 3″. Saybrook to Warren one 3″ and one 4″. Between Shannopin Station and the Butler refinery the line is double 3″. Elsewhere the line consists of single 3″. [fol. 128] Although in many places the pipe is in an advanced state of corrosion, there is no reason to expect a sudden collapse of the entire Valvoline system. Replacements and repairs have been in progress for many years. Joints of two year old pipe were found connected to joints which certainly must have been in the ground thirty years or longer.

The condition of the line pipe in any particular system should be considered as more or less relative and to be measured largely by the way the line stands up under its own particular load. Where large volumes of crude are being handled under conditions of twenty-four hour service, much higher standards must be maintained. Under such circumstances, a main line break can be something of a disaster, and even a small leak is sometimes costly. Anywhere in the Mid-Continent field the Valvoline line would be ridiculous. In Pennsylvania, however, where the volume of crude transported by even the largest oil carriers is relatively small, the Valvoline line functions with a fair degree of efficiency.

Right-of-Way

Valvoline Pipe Lines is probably more popular with producers than any other eastern crude purchaser. For that reason, the company has had very little trouble in securing right-of-way at reasonable prices across producing properties. Then too, the purchase of right-of-way for field lines usually devolves upon the district foreman or the district gauger, who knows and is known to the individuals with whom he has to deal.

During the active years in the Appalachian field this was a matter of some importance, as field lines were being constantly changed, extended and taken up. What we might term the "connection turnover" is not as great as formerly. Still, the Valvoline line is connected to thousands of wells and occasional line changes are still necessary where new wells are being connected to supplant those abandoned.

The right-of-way for the line was not costly at the time it was laid. As previously stated, the main line gradually crept down through Pennsylvania into West Virginia and Ohio, requiring something like half a century to reach its present extent. Today it would be difficult and exceedingly expensive to duplicate this right-of-way through the closely populated sections and many industrial districts traversed by the Valvoline line.

[fol. 129] In the early years of the oil industry, some companies regarded it unnecessary to record pipe line right-of-way. At least many of the important carriers in eastern fields were lax in this respect. Here it should be noted that much of Valvoline's original right-of-way has never been placed on record. In common with many other long established companies, all that Valvoline has to show for some of its right-of-way are receipts from the landowners.

A copy of the form of right-of-way grant used by the Valvoline Pipe Lines is shown on the following page.

The Valvoline Oil Company, unlike most of the other eastern producers, buys the oil at the producer's tanks and transports its own oil instead of carrying the oil as a credit, as is customary among the common carrier pipe lines.

The division order and transfer order used by the Valvoline Oil Company, copies of which forms being herein inserted, authorize the company to "credit proceeds of all oil sold" to the owners according to their various interests.

8

In Consideration *of the sum of* _____

per rod, to _____ *in hand paid, by the West Va. Pipe Lines, Department of Valvoline Oil Co., the receipt of which is hereby acknowledged,* _____ *do grant unto the said West Va. Pipe Lines, Department of Valvoline Oil Co., and its assigns the right to lay, construct, maintain and remove a* _____ *inch pipe line over and through our land situate in* _____ *Township,* _____ *County,* _____

Said pipe line being _____ *rods in length, more or less, and located in accordance with the survey heretofore made by the said Company.*

Provided, however, that the said West Va. Pipe Lines, Department of Valvoline Oil Co. is not hereby relieved from the payment of any damages hereafter caused to growing crops, fences, springs, etc., which may be caused by any work done upon said land in the maintaining or removal thereof; and provided further, that when said pipe line shall be removed, the said West Va. Pipe Lines, Department of Valvoline Oil Co. is to fill in the trench caused by said removal.

Provided further, that if it should become necessary for the said West Va. Pipe Lines, Department of Valvoline Oil Co. to lay an additional line across the said land, said Company shall pay rodage for the construction of any such additional line, at the price above mentioned.

WITNESS our hands and seals, this _____ *day of* _____, *A. D. 19*____

_____ (SEAL)

WITNESS:

_____ (SEAL)

_____ _____ (SEAL)

VALVOLINE OIL COMPANY

VALVOLINE PIPE LINES DEPARTMENT

BUTLER, PA.

IN CONSIDERATION OF THE SUM OF.....

..... Dollars to.....in hand paid, by the **Valvoline Oil Company,** Valvoline Pipe Lines Department, the receipt of which is hereby acknowledged,.....do grant unto the said **Valvoline Oil Company,** Valvoline Pipe Lines Department, its successors and assigns, the right to lay, construct, maintain, replace and remove pipe line over and through our land, situate in.....

.....Township, District .....County,....., bounded

North by.....East by.....

South by.....and West by.....

Said pipe line being.....feet in length, more or less, and located in accordance with the survey made by the said Company.

Provided, however, that the said **Valvoline Oil Company,** Valvoline Pipe Lines Department is not hereby relieved from the payment of any damages hereafter caused to growing crops, fences, springs, etc., which may be caused by any work done upon said land in the maintaining or removal thereof; and provided further, that when said pipe line shall be removed, the said **Valvoline Oil Company,** Valvoline Pipe Lines Department is to fill in the trench caused by said removal. Said damages if not agreed upon by the parties shall be determined by three men, one to be chosen by each party and these two shall choose the third arbitrator. Their decision shall be final.

Provided further, that if it should become necessary for the **Valvoline Oil Company,** Valvoline Pipe Lines Department to lay and maintain an additional line across the said land the right so to do along the same route is hereby given at the same price and on the same terms as above stated.

Title to this land is held by deed from.....to..... dated the

.....day of.....A. D.....

.....

.....

.....

WITNESS our hands and seals, this.....day of.....A. D.....

Said pipe line being.....feet in length, more or less, and located in accordance with the survey made by the said Company.

Provided, however, that the said **Valvoline Oil Company,** Valvoline Pipe Lines Department is not hereby relieved from the payment of any damages hereafter caused to growing crops, fences, springs, etc., which may be caused by any work done upon said land in the maintaining or removal thereof; and provided further, that when said pipe line shall be removed, the said **Valvoline Oil Company,** Valvoline Pipe Lines Department is to fill in the trench caused by said removal. Said damages if not agreed upon by the parties shall be determined by three men, one to be chosen by each party and these two shall choose the third arbitrator. Their decision shall be final.

Provided further, that if it should become necessary for the **Valvoline Oil Company,** Valvoline Pipe Lines Department to lay and maintain an additional line across the said land the right so to do along the same route is hereby given at the same price and on the same terms as above stated.

Title to this land is held by deed from.....to..... dated the .....day of.....A. D.....*

.....

.....

.....

WITNESS our hands and seals, this.....day of.....A. D.....

.....(SEAL)

Attest: .....(SEAL)

.....(SEAL)

*If by will, give the name of the testator and book and page where recorded.
If as sole heir or heirs, give the name of the ancestor.

State of.....
County of..... } ss.

Before me, a Notary Public in and for said County and State, personally appeared.....

.....whose name.....signed to the within writing, bearing date the.....

f.....19....., and this day acknowledged the same before me in the

aid County to be.....act and deed.

Given under my hand and seal this.....day of.....19.....

.....

RIGHT OF WAY

FROM

.....

TO

Valvoline Oil Company

Valvoline Pipe Lines Department

Line.....

Length.....Rods.

Recorded in the office of the County

Clerk of.....County

on the.....day of.....19.....

in.....Book No.....

Page.....

.....

County Clerk.

Agreement

Made this day of 19

between

of the first part, and the Valvoline Oil Company, Valvoline Pipe Lines Department, located at East Butler, Pennsylvania, of the second part.

WHEREAS, the part of the first part claim to be the owner of and in possession of

and the party of the second part is purchasing from the part of the first part the oil produced from said land.

NOW THIS AGREEMENT WITNESSETH, That the said part of the first part hereby agree with the said Valvoline Oil Company, its successors and assigns, at all times hereafter well and sufficiently to save harmless and keep indemnified the said Valvoline Oil Company, and its successors from and against all and all manner of costs, charges, expenses and damages which it, the said Valvoline Oil Company, and its successors shall at any time or times hereafter bear, pay, sustain or become liable for concerning or growing out of the said property and the delivery and taking of the oil therefrom as aforesaid.

The part of the first part shall from time to time and at all times defend against any cause, action or proceeding in law or in equity which may be brought against the said Valvoline Oil Company, or in which it may become a party by reason of any adverse claim to said property or to the oil produced therefrom, the proceeds therefor or to any part thereof, and defend the same at own expense and charges.

and the party of the second part is purchasing from the part of the first part the oil produced from said land.

NOW THIS AGREEMENT WITNESSETH, That the said part of the first part hereby agree with the said Valvoline Oil Company, its successors and assigns, at all times hereafter well and sufficiently to save harmless and keep indemnified the said Valvoline Oil Company and its successors from and against all and all manner of costs, charges, expenses and damages which it, the said Valvoline Oil Company, and its successors shall at any time or times hereafter bear, pay, sustain or become liable for concerning or growing out of the said property and the delivery and taking of the oil therefrom as aforesaid.

The part of the first part shall from time to time and at all times defend against any cause, action or proceeding in law or in equity which may be brought against the said Valvoline Oil Company, or in which it may become a party by reason of any adverse claim to said property or to the oil produced therefrom, the proceeds therefor or to any part thereof, and defend the same at own expense and charges.

IN WITNESS WHEREOF the said parties of the first and the second part have hereunto caused their seals to be affixed the day and year above written.

.... (SEAL)

.... (SEAL)

.... (SEAL)

VALVOLINE OIL COMPANY,
Valvoline Pipe Lines Department.

By .....

77

INDEMNITY AGREEMENT

.....

.....

.....

.....

with

VALVOLINE OIL COMPANY,

Valvoline Pipe Lines Department.

134

DIVISION ORDER

To VALVOLINE PIPE LINES, EAST BUTLER, PA.

DEPARTMENT OF VALVOLINE OIL COMPANY

.....19.....

The undersigned certify and guarantee that they are the legal owners of Wells No..... Tanks No.....

on..... Farm, ... Township .....County, State of.....including the royalty interest, and until further notice you will credit proceeds of all oil sold as per directions below, payable at the office of the Company, East Butler, Pa.

OWNERS OF ABOVE LEASE MUST HAVE THEIR NAMES WRITTEN HERE

CREDIT TO	DIVISION OF INTEREST	WRITE FULL P. O. ADDRESS

The VALVOLINE PIPE LINES are hereby authorized, until further notice to connect its pipe lines and to purchase and take the Oil from the Wells of said parties severally in the proportions named, subject to terms and conditions agreed upon. We agree, in case of any adverse claim of title, to furnish the VALVOLINE PIPE LINES satisfactory evidence of title, or failing to do so, furnish satisfactory indemnity, upon reasonable demand, against said adverse claim or claims, and that the said VALVOLINE PIPE LINES may refuse to pay for the Oil until we do so, or until the dispute as to ownership is settled. We further agree to promptly notify the VALVOLINE PIPE LINES of any change of ownership, whether arising from sale, death, receivership, bankruptcy or otherwise.

OWNERS OF ROYALTY AND WORKING INTEREST MUST SIGN BELOW

WITNESS

OWNERS

TO VALVOLINE PIPE LINES, EAST BUTLER, PA.

DEPARTMENT OF VALVOLINE OIL WORKS, LTD.

.....19.....

.....have transferred ..... interest

in Well No..... on..... Farm,

Tank Nos. .....Township of .....

County of .....State of .....

INTEREST	NAMES	POST OFFICE ADDRESS

You will place proceeds of oil purchased by you from the same to.....credit on your books from the

.....day of .....19.....

WITNESS	THE PARTY SELLING THE ABOVE INTEREST MUST SIGN HERE
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

The assignee* above named hereby certifies and agrees that he or she is the legal owner of the interest in the wells above transferred and authorizes the VALVOLINE PIPE LINES, until further notice, to receive oil from said wells pursuant to above transfer, subject to their usual terms and conditions, and agrees, in case of any adverse claim of title, to furnish the said VALVOLINE PIPE LINES satisfactory evidence of title, or failing to do so, to furnish satisfactory indemnity upon reasonable demand against such claim or claims; and that the said VALVOLINE PIPE LINES may refuse to pay for the oil until this is done or until the dispute as to ownership is settled; and agrees that the costs and expenses necessarily incurred by the VALVOLINE PIPE LINES in such dispute may be charged against said account, and further agrees to promptly notify the said VALVOLINE PIPE LINES of any change of ownership.

WITNESS	THE PURCHASER OF ABOVE INTEREST MUST SIGN BELOW

POWER OF ATTORNEY

To VALVOLINE PIPE LINES, EAST BUTLER, PA.

DEPARTMENT OF VALVOLINE OIL COMPANY

.....19.....

.....of.....

.....

is hereby constituted my / our attorney in fact for the following purposes:

1st. To sell my / our oil and receive the proceeds thereof.

2nd. To execute all papers necessary to make and complete the sale thereof.

3rd. To transact all business pertaining to the foregoing or arising out of same until further written notice.

4th. This power of attorney shall continue in full force during the life of the parties hereto and the survivor or survivors of them.

Signatures for business under this power of attorney will be made as follows:

.....

Attorney in Fact.

WITNESSES	SIGNATURES
.....	.....
.....	.....
.....	.....
.....	.....

[fol. 138] Connecting New Wells—Hand Picked Crude

Before a gauger is authorized to connect a new tank, he must receive approval of the Butler office. A sample of the oil is forwarded to Butler in every case, and is there analyzed as to lubricating values and especially as to color. There is a little bottle in the Butler office, placed there by Mr. Ellis. It bears the following caption, "Connect no oil that is darker than this sample."

Of course it is impossible to carry out these instructions literally. There are occasional tanks of dark oil to be found connected to the line but they are in the vast minority. The only really black oil run in any quantity comes from the Enterprise District along the Warren Venango county line.

An incident that occurred a few years ago may serve to show how strict were Mr. Ellis' rules in the matter of dark oil. By some accident quite a lot of dark green oil in the Freeport District of West Virginia was connected at considerable expense. Mr. Ellis discovered what had happened and ordered the new line immediately taken up. In spite of the producers' protests, they found themselves over-night without a market, but were eventually connected by Eureka.

The gaugers in the field have been trained over a period of years to differentiate with some finesse between the oil that will prove acceptable to the refineries and that which will be turned down.

In this connection it might be mentioned here that in the Butler office, Mr. Dunlevy has been classifying the various producing sands in each district as to light and dark oil. This work is proceeding slowly and it will probably be some time before the classification will make it possible to determine even the general characteristics of each sand in each district.

[fol. 139] Conclusion

This brief history shows what the Valvoline Oil Company really has in the way of a pipe line system.

Through years of experience in operating this particular system the company has been able to overcome defective engineering and antiquated equipment. The Valvoline Oil Company has already reduced operating expenses close

to the absolute limit. Further economies in operation will hardly be possible if the company continues to operate its entire system. The future of any pipe line depends upon the stability of its crude supply and the stability of its market. While the production in Pennsylvania, Ohio and West Virginia is thoroughly settled, yet it cannot be stated positively just how long the supply will continue in the face of statistics showing a gradual reduction in the fields served by the Valvoline.

Thus it will be seen that the Valvoline in its early history was impressed with the necessity of having established a constant supply of crude oil of its own, and from a small beginning the pipe line system has been developed so that it has become a plant facility and an integral part of the refinery business and operated solely by the company for its own use and not in any way involving the transportation of any other oil or in any way determining the market or fixing the prices therefor.

[fol. 140] EXHIBIT No. 4

Witness Vogle

This is to Certify, that we, W. Dixon Ellis, Cedric R. Boult, George A. Ellis, William James Goulding and Elliott Greene, Jr., do hereby associate ourselves into a corporation, by virtue of the provisions of an act of the Legislature of New Jersey entitled: "An Act concerning Corporations" (revision of 1896,) approved April 21st, 1896, and the several supplements thereto for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth.

First. The name of the corporation is Valvoline Oil Company.

Second. The location of the principal office in this State is at Edgewater, in the County of Bergen.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is Herman B. Gates.

Third. The objects for which the said corporation is formed are to acquire, own, lease, occupy, use or develop any lands containing petroleum, oils and kindred substances

and woodlands or other lands for any purpose of the Company.

To mine or otherwise to extract or remove petroleum oils, acids, gas and kindred substances from any lands owned, acquired, leased or occupied by the Company or from any other lands.

To buy and sell or otherwise to deal or to traffic in petroleum, oils, acids and kindred substances and other materials and any of the products or by products thereof and any articles consisting or partly consisting thereof.

To apply for, obtain, register, purchase, lease or otherwise to acquire and to hold, use, own, operate and introduce, and to sell, assign or otherwise to dispose of any trademarks, formulaes, secret processes, tradenames, patents, inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere or otherwise, and to use, exercise, develop, grant licenses in respect of or otherwise to turn to account any such trademarks, patents, licenses, processes and the like or any such property or rights.

To engage in any other manufacturing, mining, construction or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To carry on any other business, whether manufacturing or otherwise, which may or may seem to the Company to aid or facilitate the business of the Company in its mining or manufacturing and in the building and dealing in its products, or which may seem to the Company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the Company's property or rights.

To acquire by purchase, subscriptions or otherwise, and to hold or dispose of, stocks, bonds or any other obligations of any corporation formed for, or then or theretofore engaged in or pursuing, any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned, or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell or dispose of any stock, bonds or other obligations of any such [fol. 141] other corporation to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the Company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value or any such stock, bonds or other obligations, or to do any acts or things designed for any such purpose; and, while owner of any such stock, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the Company is from time to time to do any one or more of the acts and things herein set forth, and it may conduct its business in other states and in the territories and in foreign countries and may have one office or more than one office and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law, and may hold, purchase, mortgage and convey real and personal property, either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation it is hereby expressly declared and provided that the corporation shall have the power to issue bonds and other obligations in payment for property purchased or acquired by it or for any other object in or about its business to mortgage or pledge any stocks, bonds or other obligations or any property which may be acquired by it to secure any bonds or other obligations by it issued or incurred, to make and perform contracts of any kind and description and in carrying on its business or for the purpose of attaining or furthering any of its objects to do any and all other things and to exercise any and all other powers which a co-partnership or natural person could do and exercise and which now or hereafter may be authorized by law.

This Company is formed in pursuance of a contract entered into by and between the members of the firms or copartnerships of John Ellis and Company and of Leonard and Ellis, for the purpose of taking the several interests, rights, franchises, trademarks, estate and property, both real and personal, of said firms and of each of them, wheresoever situate, together with the good will and business of said firms and of each of them, and to conserve

the properties, carry on and continue the business of the said firms, and the business interests which may be the natural outgrowth therefrom, and to pay to the said firms therefor the price agreed upon in any by the terms of said contract.

Fourth. The total amount of the capital stock is One million five hundred thousand Dollars; the number of shares into which the same is divided is Fifteen thousand, and the par value of each share is One hundred Dollars.

Fifth. The names and Post Office addresses of the incorporators, and the number of shares subscribed for by each, (the aggregate of said subscriptions being eight hundred and fifty thousand Dollars is the amount of capital stock with which the corporation will commence business) are as follows, to wit:

W. Dixon Ellis	New York City, New York	7775 Shares
Cedric R. Boult	Liverpool, England	500 Shares
George A. Ellis	Brooklyn, New York	100 Shares
William James Goulding	New York, City, New York	100 Shares
Elliott Greene, Jr.	Jersey City, New Jersey	25 Shares

Sixth. The duration of the corporation shall be perpetual.

Seventh. The number of Directors of the Company shall be fixed from time to time by the by-laws.

The number of Directors may be increased as may be provided in the by-laws. In case of any increase of the number of the Directors the additional Directors shall be elected as may be provided in the by-laws by the Directors [fol. 142] or by the stockholders at an annual or special meeting.

In case of any vacancy in any class of Directors through death, resignation, disqualification or other cause, the remaining Directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the Board. The by-laws may prescribe the number of Directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the Directors.

Unless authorized by votes given in person or by proxy by stockholders holding at least a majority of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the Board of Directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors.

Any other officer or employee of the Company may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole Board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and, to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors, by the affirmative vote of a majority of the whole Board, may appoint any other Standing Committees, and such Standing Committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The Board of Directors may appoint not only other officers of the Company but also one or more vice presidents, one or more assistant treasurers and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer and of the secretary respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the Company; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any

such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the Company's capital stock as provided by law.

[fol. 143] The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by Statute or authorized by the Board of Directors or by a resolution of the stockholders.

Subject always to by-laws made by the Stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

In Witness Whereof we have hereunto set our hands and seals the 17th day of June, one thousand nine hundred and one.

W. Dixon Ellis. (L. S.) Cedric R. Boult. (L. S.) George A. Ellis. (L. S.) Wm. James Goulding. (L. S.) Elliott Greene, Jr. (L. S.)

Signed, sealed and delivered in the presence of Henry B. Twombly.

STATE OF NEW YORK,
County of New York, ss:

Be It Remembered that on this 17th day of June, in the year of Our Lord One thousand nine hundred and one before me, the subscriber, personally appeared W. Dixon Ellis, Cedric R. Boult, George A. Ellis, William James Goulding and Elliott Greene, Jr., who I am satisfied are the persons named in and who executed the foregoing certificate of incorporation, and I having first made known to them the

contents thereof they severally acknowledged that they signed sealed and executed the same as their voluntary act and deed, for the uses and purposes therein expressed.

Henry B. Twombly, Master in Chancery in the State of New Jersey.

Endorsed: "Received in the office of the Clerk of Bergen County, N. J. on the 18" day of June, A. D. 1901 at 9 A. M. and recorded in Liber No. 3 of Incorporations page —. John R. Ramsey C."

"Filed June 19, 1901. George Wurts, Secretary of State."

[fol. 144]

EXHIBIT No. 5

Witness, Dunlevy

Crude Oil

Comparison Showing Amount of Crude Oil Transported Over a State Line an Sold to Outsiders, Together with Amount of Oil Gathered in Pipe Lines

	Barrels		
1934	Amount Crude Transported Over Ohio Line to Ohio Valley Refining Co., St. Mary's, W.Va.	Total Amount Crude Gathered	Percentage oil transported over State Line — Per Cent
April	3,509.51	74,166.33	4.73%
May	5,005.98	80,146.23	6.25
June	2,497.47	75,812.97	3.29
July	3,055.46	78,012.90	3.92
August	2,002.59	80,676.46	2.48
September	2,508.24	76,429.20	3.28
October	2,502.24	79,117.30	3.16
November	2,496.66	73,925.41	3.38
December	2,522.47	70,636.00	3.57
Total	26,100.62	688,922.80	3.79
1935			
January	4,995.13	68,418.78	7.30
February	2,507.53	65,578.22	3.82
March	1,911.72	73,345.74	2.61
April	3,094.64	73,352.69	4.22
May	5,004.66	75,788.58	6.60
June	2,506.26	71,865.22	3.49
July	2,507.59	74,707.92	3.36
August	2,509.94	71,790.46	3.50
September	2,504.59	70,751.40	3.54
October	2,507.38	77,286.73	3.24
November	2,500.12	70,588.38	3.54
December	5,003.74	66,002.46	7.58
Total	37,553.30	859,476.58	4.37

EXHIBIT No. 5—Continued

Witness, Dunlevy

Crude Oil

Comparison Showing Amount of Crude Oil Transported Over a State Line and Sold to Outsiders, Together with Amount of Oil Gathered in Pipe Lines

Barrels

	Amount Crude Transported Over Ohio Line to Ohio Valley Refining Co., St. Mary's, W.Va.	Total Amount Crude Gathered	Percentage oil transported over State Line
1936			Per Cent
January	2,412.66	63,706.49	3.79
February	2,589.51	64,226.85	4.03
March	2,495.48	75,554.66	3.30
April	2,496.09	76,022.89	3.28
May	2,496.50	77,652.81	3.21
June	2,500.03	81,741.24	3.06
July	2,509.80	73,641.97	3.41
August	2,499.96	74,060.59	3.38
September	2,495.73	75,907.93	3.29
October	1,801.70	79,696.19	2.26
November	2,242.48	68,632.00	3.27
December	2,756.26	80,041.75	3.44
Total	29,296.20	890,885.37	3.29
1937			
January	191.39	68,786.24	.28
February	4,793.01	64,552.30	7.43
March	2,504.70	80,273.43	3.12
April	2,808.88	77,726.27	3.61
May	2,196.75	74,028.31	2.97
Total	12,494.73	365,366.55	3.42
Grand total	105,444.85	2,804,651.30	3.78

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EXHIBIT No. 7

Witness Dunlevy

Crude Oil Purchased From Producers

Year	Total Barrels
1901	263,219
1902	316,360
1903	351,217
1904	341,885

EXHIBIT No. 7—Continued

Year	Total Barrels
1905	283,122
1906	309,442
1907	335,191
1908	356,847
1909	662,838
1910	777,727
1911	857,266
1912	879,165
1913	884,291
1914	918,083
1915	779,313
1916	633,430
1917	815,129
1918	851,262
1919	986,345
1920	967,567
1921	817,822
1922	787,595
1923	780,917
1924	746,671
1925	872,670
1926	1,056,445
1927	1,025,940
1928	1,038,991
1929	1,143,710
1930	1,059,774
1931	959,840
1932	854,744
1933	843,132
1934	904,294
1935	859,477
1936	890,885
36 Years	27,212,606
Average per Year	755,906

[fol. 146]

EXHIBIT No. 9

Witness, Dunlevy

Producers' Tanks Not Connected by Pipe Line from Which Oil Was Hauled by Either Truck or Tank Car During Year 1936

Tank No.	Farm	Township	County	State	Barrels
		Hauled by Truck			
197	Hillman	Marshall	Allegheny	Penna.	9.22
293	Amsler	Franklin	"	"	68.41
312	Steffen	Frazier	"	"	194.21
510	Raybuck	Center	Butler	"	5.41
528	Center	Butler	"	"	10.28
532	Bredin	Butler	Butler	Penna.	4.39
2218	Meals	Concord	"	"	12.67
285	Demmler	Adams	"	"	22.35
667	Raybuck	Center	"	"	22.76
10	Welch	Smith	Washington	"	15.32
224	Morgan	Sewickley	Beaver	Penna.	5.56
18	Donaldson	Sheffield	Warren	"	886.63
410	McClelland	Richhill	Greene	"	11.86
1089	Carothers	Butler	Hancock	W. Va.	401.11
1093	McAbee	Cross Creek	"	"	319.88
1096	Dellenbach	Cross Creek	Brooke	W. Va.	863.93
1097	Dellenbach	" "	"	"	362.54
1098	Dellenbach	" "	"	"	147.17
1099	Dellenbach	" "	"	"	280.40
1100	Dellenbach	" "	"	"	198.86
1150	Armstrong	Buffalo	Brooke	W. Va.	898.89
1158	Wells	"	"	"	812.62
1172	Armstrong	"	"	"	180.08
516	Hardman	Grant	Ritchie	"	18.08
500	Sharp	"	"	"	6.07
505	Coil	Murphy	Ritchie	W. Va.	17.22
500	Robinson	Grant	"	"	9.52
500	Ferguson	"	"	"	45.23
505	McGregor	"	"	"	35.87
516	Lyons	"	"	"	8.26
595	Hill	Grandview	Washington	Ohio	23.00
31					5,897.80
		Hauled by Tank Car			
1209	Thompson	Canonsburg	Washington	Penna.	94.24
1245	Enlow	Chartiers	"	"	293.24
1246	Tannehill	"	"	"	1,013.59
1258	McKown	Cecil	"	"	564.20
1900	Rockenstein	Clay	Butler	"	922.86
1901	Rockenstein	Clay	Butler	Penna.	671.49
1902	W. Alleg.	"	"	"	827.05
1903	W. Alleg.	"	"	"	501.95
1904	W. Alleg.	"	"	"	319.45
9					5,208.07
40					11,105.87

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EXHIBIT No. 10

Witness, Dunlevy

Representative Average Daily Amount in Barrels of Crude Oil Being Run in States and Counties

County	No. of Wells	Average Daily Runs	Average Daily Per Well
Pennsylvania			
Warren	2,274	142	.06
McKean	380	122	.32
Elk	442	92	.21
Forest	365	83	.23
Venango	626	145	.23
Armstrong	41	2	.05
Clarion	699	85	.12
Butler	777	270	.35
Allegheny	216	88	.41
Beaver	97	55	.56
Washington	283	96	.34
Greene	91	75	.82
Total	6,291	1,254	.20
West Virginia			
Hancock	13	2	.15
Brooke	59	8	.13
Ohio	48	2	.04
Marshall	26	40	1.54
Wetsel	98	75	.77
Monongalia	54	11	.20
Marion	21	17	.81
Tyler	191	69	.36
Doddridge	71	85	1.20
Ritchie	340	335	.99
Pleasants	242	100	.41
Wirt	25	5	.20
Calhoun	182	21	.12
Total	1,370	770	.56
Ohio			
Monroe	239	116	.49
Washington	1,120	220	.20
Total	1,359	336	.25
Grand Total	9,020	2,360	.26

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EXCERPT FROM EXHIBIT 11

Summary of Gathering Tanks Run Infrequently

Number of Times Run	Number of Tanks	Total Barrels Run	Average Barrel Run Per Year
Once in last 4 years	28	1,394.33	348.58
Once in last 3 years	46	1,553.09	517.69
Once in last 2 years	77	3,509.45	1,754.73
Once per year	304	11,965.74	11,965.74
Twice per year	343	25,582.86	25,582.86
Three times per year	276	32,525.17	32,525.17
Four times per year	217	37,164.85	37,164.85
Total	1291		109,859.62

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EXHIBIT No. 12

Witness Dunlevy

BEFORE THE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 1202

Cross Section of Tanks Run from Various Leases Illustrating Distribution of Interests in Leases and Amounts Received During Year 1936

Legend

R.—Represents Royalty Interests (1/8 Interest).
W.—Represents Working Interest, after Deduction of Royalty Interest.

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Tank No.	Farm	County & State	Owners	Fractional Interest Owned		Barrels
250	Morrow	Allegheny, Pa	I. H. Jackson	R	1/8	23.37
			G. F. Altman	W	1/16	10.23
			J. W. Nordheim	W	1/16	10.23
			J. E. Ashbaugh	W	1/16	10.23
			R. C. Thornberry	W	1/16	10.23
			T. B. Jones	W	1/16	10.22
			C. C. Dumbaugh	W	1/8	20.45
			H. S. Beals	W	1/8	20.45
			H. K. Foster	W	3/8	61.35
			Regis Lauer	W	1/16	10.22
						186.98

Exhibit No. 12—Continued

Cross Section of Tanks Run from Various Leases Illustrating Distributing of Interests in Leases and Amounts Received During Year 1936—Continued

Tank No.	Farm	County & State	Owners	Fractional Interest Owned		Barrels
610	Pearce	Butler, Pa.	Anna V. Kirk	R	1/32	15.62
			M. J. Stiefel	R	1/32	15.62
			Eliz. Murphy	R	1/32	15.62
			Harry H. Turner	R	1/40	12.50
			Mary A. Pearce	R	1/160	3.12
			E. G. Miller	W	1/8	54.67
			Wm. Gould	W	1/8	54.67
			C. Gould	W	3/8	164.00
			Milton Miller	W	3/8	164.01
						499.83
616	Eberhardt	Allegheny, Pa.	Philip Eberhardt	R	1/8	6.26
			Wm. E. Weber	W	1/16	2.75
			Beeler & McEvoy	W	1/8	5.50
			Isaac P. Hartung	W	3/16	8.25
			John H. Young	W	1/16	2.75
			E. H. Euwing	W	1/16	2.75
			G. W. Kummer	W	1/16	2.75
			Herman P. Brandt	W	1/16	2.75
			K. A. Dombaugh	W	1/16	2.75
			J. T. Beeler	W	1/16	2.74
			W. E. McEvoy	W	3/16	8.25
			C. W. Willoughby	W	1/16	2.75
						50.28

883	Dusold	Allegheny, Pa	Agnes Dusold	R	1/8	20.17
			Cit. Nat. Bk. a/c 1	W	1/16	8.82
			P. H. Parks	W	1/16	8.82
			Eliz. Andes	W	1/16	8.82
			John Dusold, Jr.	W	1/32	4.41
			Anna Dusold	W	1/32	4.41
			Frank Dusold	W	3/16	26.48
			Agnes Dusold	W	1/16	8.83
			Cit. Nat. Bk. a/c 2	W	1/8	17.65
			S. H. McPherson	W	1/16	8.83
			J. L. Eichley	W	1/16	8.82
			P. F. Smith	W	1/16	8.82
			Pankras Frinzel	W	1/16	8.82
			G. C. Harbison	W	1/8	17.65
						161.35
641	Lot 390	McKean, Pa	Penna. Oil Co.	R	1/16	41.34
			A. J. Hazeltine	R	5/192	17.23
			C. W. Stone Est.	R	5/192	17.22
			F. A. Walker	R	1/144	4.59
			A. J. Bornkamp	R	1/144	4.59
			Nellie A. Hart	R	1/144	4.60
			Kinley Oil Co.	R	1/96	6.89
			N. C. Parshall	R	1/96	6.89
			Shef. Nat. Bk.	W	8/8	558.10
						661.45

EXHIBIT No. 12—Continued

[fol. 151]

Cross Section of Tanks Run from Various Leases Illustrating Distribution of Interests in Leases and Amounts Received During Year 1936—Continued

Tank No.	Farm	County & State	Owners	Fractional Interest Owned		Barrels
1014	Lot 4791	Forest, Pa	A. J. Haseltine	R	5/192	5.53
			C. W. Stone Est	R	1/24	8.85
			Edw. Lindsey	R	1/24	8.84
			M. B. Dunham	R	1/64	3.32
			L. L. Houston	W	8/8	185.78
						212.32
382	Lohr	Greene, Pa	B. M. Lohr	R	1/16	.55
			J. L. Kent	R	1/48	.19
			Geo. B. Kent	R	1/48	.18
			Lulu McCracken	R	1/192	.05
			Goldie Wright	R	1/192	.05
			Jennie Kuhn	R	1/192	.04
			W. B. Hughes	R	1/192	.04
			Loar Oil & Gas Co	W	8/8	7.71
						8.81

419	Shay Heirs	Wetzel, West Va.	Ora M. Edgell, Gdn.	R	1/72	26.25
			Clovis & Crow	R	1/72	26.25
			Cen. Wheel. Sav. Bk	R	1/18	105.01
			J. E. Murphy	R	1/432	4.38
			S. J. Kilcoyne	R	1/36	52.50
			Mary Bridges, Atty.	R	5/432	21.88
			Maxton O. & G. Co.	W	8/8	1653.92
						1890.19
613	Edgell	Wetzel, West Va.	So. Penn Oil Co.	R	3/80	11.00
			Ezra A. Edgell	R	21/880	6.99
			C. B. Highland	R	119/3520	9.92
			H. L. Smith, Tr.	R	21/704	8.76
			So. Penn Oil Co.	W	8/8	256.71
						293.38
651	Stephens	Wetzel, West Va.	Tillie Stephens	R	1/48	6.06
			J. D. Satterfield	R	1/48	6.06
			C. L. Satterfield	R	1/48	6.06
			K. K. Snodgrass	R	3/128	6.81
			J. L. Stephens	R	1/96	3.03
			G. C. McKelvey	R	7/1152	1.76
			G. M. Wood, Atty.	R	1/48	6.06
			J. J. Crawford, A	R	1/576	.51
			R. A. Marshall	W	1/2	127.21
			L. E. Gemperle	W	1/32	7.95

Exhibit No. 12—Continued

Cross Section of Tanks Run from Various Leases Illustrating Distribution of Interests in Leases and Amounts Received During Year 1936—Continued

Tank No.	Farm	County & State	Owners	Fractional Interest Owned		Barrels
			Elias Ritts	W	15/32	119.25
						290.76
705	McClusky	Marshall, W. Va.	C. W. McClusky	R	1/24	3.37
			A. E. McClusky	R	1/12	6.74
			A. F. Francis	W	1/56	1.26
			F. A. McNinch	W	1/56	1.27
			S. J. Hunter	W	1/84	.84
			W. E. Clayton	W	1/84	.84
			J. D. Parriott	W	1/84	.85
			J. W. Moorhead	W	13/14	65.70
						80.87
827	Spencer	Tyler, W. Va.	A. Spencer, Atty	R	7/108	141.07
			A. Spencer, Gdn	R	1/108	20.15
			J. W. Kerns	R	11/432	55.42
			S. A. Smith	R	11/432	55.42
			Amer. Oil Dev. Co.	W	8/8	1904.42
						2176.48

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1166	Adams	Pleasants, W. Va.	H. S. Snyder, Atty	R	1/32	3.60
			Grace Riggs, Atty	R	3/32	10.82
			Crawford O. & G. Co	W	1/8	12.62
			Un. N. Bk., a/c 5	W	959/1200	80.69
			Robt. E. Bills	W	1/75	1.34
			J. G. Umpleby	W	1/16	6.31
						115.38
1475	Stephens	Wash., Ohio	Henderson Oil Co	R	7/169	17.02
			E. S. DeLong, Atty	R	113/1352	34.35
			Henderson Oil Co	W	8/8	359.57
						410.94
1579	Smith Hrs.	Doddridge, W. Va.	R. D. Smith	R	1/352	.45
			Sina E. Shinn	R	15/1408	1.70
			Retta Shinn	R	15/1408	1.70
			Lillie Fleming	R	15/1408	1.70
			Nellie Smith	R	15/1408	1.70
			R. E. Smith	R	15/1408	1.70
			H. H. Smith	R	15/1408	1.71
			W. A. Smith	R	15/1408	1.71
			Fred A. Smith	R	15/1408	1.71
			Glenn Smith	R	1/352	.45
			Carrie Underwood	R	1/352	.46
			Sallie Jolliffe	R	1/32	5.00
			J. J. Graham	W	8/8	139.92
						159.91

Exhibit No. 12—Continued

Cross Section of Tanks Run from Various Leases Illustrating Distribution of Interests in Leases and Amounts Received During Year 1936—Continued

Tank No.	Farm	County & State	Owners		Fractional Interest Owned	Barrels
1632	Garrett	Ritchie, W. Va.	P. R. Garrett	R	363/3200	16.53
			P. B. Garrett, Atty	R	1/130	.91
			L. H. Crispin	R	1/640	.23
			Nannie McCuen	R	1/800	.19
			S. A. Grable	R	1/800	.18
			Alvin Trainer	R	1/2400	.06
			Alvin Trainer, Gdn	R	1/4800	.03
			Bertha Trainer	R	1/4800	.03
			R. E. Trainer	R	1/4800	.03
			Fannie Hemsworth	R	1/4800	.03
			Gilmore Oil Co	W	8/8	127.54
						145.76
1739	Cook	Pleasants, W. Va.	Kate Cook, Atty	R	9/320	12.35
			C. C. Cooke, Atty	R	1/40	10.97
			C. C. Cooke, a/c 2	R	1/40	10.98
			W. E. Jarvis	R	1/320	1.37
			M. M. Doudna, Atty	R	9/640	6.17
			Bessie M. Gardner	R	3/640	2.06
			B. M. Miller, Atty	R	1/40	10.97
			Tait Bros. Co	W	8/8	384.12
						438.99

1808	Barker	Doddridge, W. Va.	Alva L. Davis	R	1/64	4.28
			J. F. Maxwell, Atty	R	1/32	8.55
			G. H. Trainer	R	1/64	4.28
			A. C. Davis	R	1/64	4.28
			L. A. Henderson	R	1/32	8.55
			A. M. Barker, Atty	R	23/1728	3.65
			Barker Heirs	R	1/432	.63
			Trainer & Travis	W	8/8	239.52
						273.74

[fol. 153]

1920	Otte	Marshall, W. Va.	Ferd Otte, Atty	R	1/16	5.29
			Harve Coffield	R	1/16	5.30
			Ferd Otte, Atty	W	1/28	2.65
			Pearl Wasmuth	W	27/448	4.47
			L. J. Wasmuth	W	27/896	2.23
			Glenn C. Griffith	W	9/448	1.49
			Louise R. Bowers	W	27/112	17.88
			G. P. Wasmuth	W	279/896	23.07
			J. P. Wasmuth	W	27/224	8.94
			L. M. Kerwood	W	27/448	4.48
			C. S. Kirkman, Adm	W	27/224	8.94
						84.74

Exhibit No. 12—Continued

Cross Section of Tanks Run from Various Leases Illustrating Distribution of Interests in Leases and Amounts Received During Year 1936—Continued

Tank No.	Farm	County & State	Owners	Fractional Interest Owned	Barrels
2070	Glass	Ritchie, W. Va.	Irene Glass	R 5/48	93.06
			C. M. Long, Atty	R 1/48	18.61
			Ira Connolly	W 29/1024	22.14
			B. F. Rinehart	W 899/1024	686.26
			Ada P. Overton	W 3/32	73.29
					893.36
2084	Cain	Ritchie, W. Va.	U. M. Reeder	R 1/32	5.82
			Eppa J. Russell	R 5/288	3.24
			J. E. Cain, Atty	R 5/144	6.47
			E. P. Chancellor	R 1/24	7.76
			Logan Est. Sec. Co	W 8/8	163.05
					186.34
2172	Morris	Ritchie, W. Va.	George Morris	R 1/32	2.30
			Davidson Co.	R 3/64	3.45
			Mabel G. Crickard	R 3/256	.86
			C. B. Gates	R 3/256	.86
			Clara L. Gates	R 3/128	1.72
			Georgia Davidson	W 1/32	2.01

			Edwin Swingle	W	1/32	2.01
			A. B. Dozer	W	419/480	56.16
			C. F. Ingraham	W	31/480	4.16
						73.53
2187	Moore	Ritchie, W. Va.	J. A. Clark	R	1/96	32.55
			H. L. McGinnis	R	1/96	32.56
			H. N. Rinehart ac. 2	R	17/480	110.68
			Laura Rayl, Atty	R	1/96	32.55
			C. C. Moore	R	7/120	182.31
			H. N. Rinehart	W	8/8	2734.57
						3125.22
2244	Lamp	Ritchie, W. Va.	Virginia Lamp	R	1/8	12.61
			C. W. Cunningham	W	13/14	81.93
			A. E. Lamp	W	1/112	.79
			Bertha Sprout	W	1/112	.79
			W. C. Lamp	W	1/112	.79
			Hattie Eddy	W	1/112	.79
			H. R. Lamp	W	1/112	.79
			Roxie Hall, Gdn	W	1/112	.79
			E. A. Lamp	W	1/112	.78
			Roxie Hall	W	1/112	.78
						100.84

Exhibit No. 12—Continued

[fol. 154]

Cross Section of Tanks Run from Various Leases Illustrating Distribution of Interests in Leases and Amounts Received During Year 1936—Continued

Tank No.	Farm	County & State	Owners	Fractional Interest Owned		Barrels
2250	Lieving	Ritchie, W. Va.	Oil City Tr. Co.	R	1/96	1.68
			E. F. Allman	R	1/96	1.68
			Annie Phillips	R	1/80	2.02
			Levi Rardin	R	1/96	1.68
			Bessie McCloy	R	1/80	2.01
			R. A. Wilson	R	1/480	.33
			William Wilson	R	1/480	.33
			G. W. Wilson	R	1/480	.34
			Mrs. C. B. Smith	R	1/16	10.08
			Oil City Tr. Co	W	8/8	141.05
						161.20
2675	Crago	Wash., Ohio	Mary E. Crago	R	1/16	82.43
			In Litigation	R	1/64	20.61
			Peoples Sav. Bk	R	7/192	48.09
			Edw. W. Amos	R	1/192	6.87
			Lucille H. Talbot	R	1/192	6.87
			Peoples Sav. Bk	W	5/32	180.32
			Lucille H. Talbot	W	7/16	504.91
			Simon Lebow	W	1/4	288.52

			E. E. Knowlton	W	1/32	36.06
			New First Nat. Bk	W	1/8	144.25
						1318.93
2684	Dye Heirs	Monroe, Ohio	G. W. Dye, Atty	R	1/384	4.66
			H. A. Lentz, Atty	R	47/384	218.87
			J. H. Rosenleib	W	1/16	97.79
			Sutton Brothers	W	15/16	1466.92
						1788.24
3017	Weber	Monroe, Ohio	Marg. Weber, Atty	R	1/16	10.75
			First Nat. Bk	R	1129/25536	7.61
			L. E. Mats	R	105/8512	2.12
			Ethel Ferguson	R	1/336	.51
			Stella H. Brenan	R	1/336	.51
			E. W. Smith	W	1/4	37.62
			Cit. Nat. Bk.	W	1/4	37.62
			F. O. Parks	W	1/2	75.24
						171.98

[fol. 155] EXHIBIT No. 13

Witness Dunlevy

Tanks Connected and Tanks Disconnected During two Year Period Ending September 30, 1937

	New Tanks Connected	Tanks Disconnected: Abandoned by Producers	Tanks Disconnected: Lost to Common Carriers
October —1935	2	3	..
November —1935	18	0	..
December —1935	9	1	..
January —1936	4	0	..
February —1936	1	4	..
March —1936	2	2	..
April —1936	1	1	..
May —1936	5	5	..
June —1936	6	10	..
July —1936	3	15	..
August —1936	8	5	..
September —1936	10	6	..
October —1936	14	9	..
November —1936	6	3	..
December —1936	5	3	..
January —1937	5	2	..
February —1937	4	1	..
March —1937	6	6	..
April —1937	4	26	38
May —1937	4	3	..
June —1937	10	5	..
July —1937	9	4	..
August —1937	5	8	..
September —1937	3	6	..
	144	128	38

[fol. 156] EXCERPT FROM EXHIBIT 14

Statement Showing Lease Owners Operating Leases on Which Five Tanks or More Are Located

Symbol	Lease Owner	No. of Farms	No. of Tanks
A	Alum Rock Gas Co	12	17
B	Baird & Co	13	18
C	Baker & Co	8	13
D	Beeler & McEvoy	14	17
E	Henry Blank	10	13
F	Home Gas Company	10	13
G	W. H. Boyd	4	9
H	E. A. Bream Co	27	34
I	Heeter & Co	6	15
J	Wm. Pfeiffer & Co	13	14
K	Cobbett & Kingsley	3	5
L	C. W. Tope & Co	20	25
M	R. M. Coulter	11	14
N	Duncan & Coulter	9	12
O	H. A. King	6	7
P	Taylor & Co	6	6
Q	Miller & Gould	10	17
R	Hadassah Oil Co	14	14
S	Hawks & Co	6	9
T	Hoch Bros	2	6
U	Johnson & Co	10	13
V	Kaltenbach Bros	4	7
W	Wm. G. Keatley & Co	8	9
X	J. W. Knappenberger	4	8
Y	Mary J. McCarthy	6	7
Z	Montgomery & Alt	6	10
AA	T. W. Phillips Gas & Oil	10	12
BB	M. W. Reits	5	6
CC	Ritsert & Co	4	7
DD	Ed. Sheridan	4	7
EE	A. R. Wahl	13	17
FF	M. M. Wally	15	17
GG	Watson & Schenck	8	9
HH	Whitling & Sons	4	11
II	J. W. Youngblood	7	8
JJ	American Oil Develop. Co	34	43
KK	Pittsburgh Oil & Gas Co	8	9
LL	Reno Oil Co	114	168
MM	South Penn Oil Co	23	39
NN	Niagara Oil Corp	5	7
OO	Jas. M. Wasmuth	10	16
PP	Carnegie Natural Gas Co	11	16
QQ	Cochran Bros	4	9
RR	Center Wheeling Bank	5	10
SS	J. C. Chisler, Atty	12	14
TT	F. D. Kerr	11	17

Statement Showing Lease Owners Operating Leases on Which Five Tanks or More Are Located—Continued

Symbol	Lease Owner	No. of Farms	No. of Tanks
UU	E. H. Jennings Bros	4	22
VV	Crew-Levick Co.	19	23
WW	Geo. T. Gale & Co	11	16
XX	Henderson Oil Co	13	17
YY	R. Logan Securities Co	9	13
ZZ	Marshall & Ritts	21	43
AB	Maxton Oil & Gas Co	10	13
AC	E. J. Mildren	11	11
AD	S. Y. Ramage	6	12
AE	Schramm & Co	12	14
[fol. 157]			
AF	Shay-McMullin Co	25	27
AG	Tait Bros. & Co	15	17
AH	Trainer & Travis	18	26
AI	Geo. Whyte & Co	20	21
AJ	Wurts Bros	6	12
AK	Bailey Bros	7	11
AL	Jno. G. Cochran & Co	15	28
AM	Finnessy & Co	6	11
AN	Jno. B. Hadden	4	10
AO	Hanley Oil Co	3	11
AP	Six Mile Oil Co	11	12
AQ	Sloan & Zook Co	9	11
AR	Goal Oil Co	7	9
AS	Crescent Oil Co	27	37
	70 Leases	838	1,201

[fol. 158]

EXHIBIT No. 16

Witness Dunlevy

Valvoline Pipe Lines
Crude Oil Tanks and Capacities

Tank No.	Capacity	Location	County	State
2	5,000	Warren	Warren	Pa.
3	4,500	"	"	"
4	5,000	"	"	"
5	5,000	"	"	"
10	1,100	Tionа	"	"
11	10,000	"	"	"
15	3,000	Donaldson	"	"
16	3,000	"	"	"
17	2,500	"	"	"
18	25	"		

EXHIBIT No. 16—Continued

Witness Dunlevy

Valvoline Pipe Lines
Crude Oil Tanks and Capacities

Tank No.	Capacity	Location	County	State
20	800	Jo Jo	McKean	Pa.
25	300	North Kane	"	"
30	1,100	Chaffee	Elk	"
35	500	Corduroy	"	"
45	500	Wetmore	McKean	"
50	750	Meade Run	Warren	"
55	6,600	Minister	Forest	"
56	2,000	"	"	"
57	5,500	"	"	"
60	3,100	Tionesta	"	"
61	3,200	"	"	"
62	1,100	"	"	"
65	250	McKee	"	"
70	250	Titus	"	"
75	500	Temperance House	Venango	"
76	850	" "	"	"
80	500	Little Hickory	Forest	"
85	250	Collins	Venango	"
90	500	Trunkeyville	Forest	"
91	500	"	"	"
96	500	Miles	Warren	"
97	500	"	"	"
100	2,500	Enterprise	"	"
101	1,100	"	"	"
102	2,500	"	"	"
200	2,400	Emlenton	Venango	"
202	5,000	"	"	"
203	1,000	"	"	"
210	500	St. Petersburg	Clarion	"
211	1,000	" "	"	"
212	1,200	" "	"	"
215	500	Knox	"	"
220	500	Rimersburg	"	"
225	1,250	New Bethlehem	"	"
230	850	Lucinda	"	"
235	500	Miola	"	"
236	500	"	"	"
240	500	Annisville	Butler	"
245	500	North Washington	"	"
246	500	" "	"	"
250	1,800	Noeline	"	"
251	1,800	"	"	"
252	5,000	"	"	"
253	10,000	"	"	"
254	12,000	"	"	"
255	30,000	"	"	"
256	5,000	"	"	"

[fol. 159]

EXHIBIT No. 16—Continued

Witness Dunlevy

Valvoline Pipe Lines
Crude Oil Tanks and Capacities

Tank No.	Capacity	Location	County	State
260	500	Oneida	Butler	Pa.
265	250	Coylesville	"	"
270	1,500	Renfrew	"	"
271	1,500	"	"	"
272	1,500	"	"	"
275	600	Whitestown	"	"
276	600	"	"	"
280	2,500	Myoma	"	"
281	2,500	"	"	"
282*	20,000	"	"	"
285	500	Evans City	"	"
290	100	Davis	Allegheny	"
291	1,500	"	"	"
292	1,900	"	"	"
293	1,900	"	"	"
300	500	Lowries Run	"	"
310	600	Robinson	"	"
315	250	Crows Run	Beaver	"
330	3,000	Shannopin	"	"
331	10,500	"	"	"
335	3,100	Burgettstown	Washington	"
336	3,700	"	"	"
337	5,000	"	"	"
338	5,000	"	"	"
339	5,000	"	"	"
340	100	"	"	"
356	1,300	Kendall	Beaver	"
361	500	Hollidays Cove	Brooke	W. Va.
362	500	" "	"	"
366	750	Follansbee	Brooke	"
370	250	Beech Bottom	"	"
376	500	Canonsburg	Washington	Pa.
401*	20,000	Claysville	"	"
407	250	Pleasant Grove	"	"
410	5,000	Grove	Greene	"
411	5,000	"	"	"
412	5,000	"	"	"
415	500	Moundsville	Marshall	W. Va.
426	500	Deep Valley	Greene	Pa.
430	1,200	Fish Creek	"	"
437	500	Jacksonburg	Wetsel	W. Va.
438	500	"	"	"
440	1,000	Board Tree	Marshall	W. Va.
445	5,000	Fallen Timber	Wetsel	"
446	5,000	" "	"	"
447	2,000	" "	"	"

EXHIBIT No. 16—Continued

Witness Dunlevy

Valvoline Pipe Lines
Crude Oil Tanks and Capacities

Tank No.	Capacity	Location	County	State
450	1,500	Mannington	Marion	W. V.a
451	500	Haught	Monongalia	"
455	500	Burton	Wetzel	"
457	500	"	"	"
458	100	"	"	"
460	3,100	Big Moses	Tyler	"
416	1,000	" "	"	"
465	500	Flint	Doddridge	"
470	1,500	Smithburg	"	"
475	500	New Milton	"	"
480	1,500	Porters Falls	Wetzel	"
485	1,500	Pennsboro	Ritchie	"
486	1,500	"	"	"
487	1,500	"	"	"
490	500	Greenwood	Doddridge	"
491	500	"	"	"
498	750	Pike	Ritchie	"
500	1,100	Cairo	"	"
501	1,100	"	"	"
[fol. 160]				
502	1,100	"	"	"
503*	20,000	"	"	"
505	250	Gillespie Run	"	"
506	250	" "	"	"
507	250	Rutherford	"	"
510	500	Buffalo	"	"
511	250	Sheep Run	"	"
515	1,000	Macfarlan	"	"
516	1,000	"	"	"
520	250	Bell Run	Clahoun	"
525	250	Long Run	Ritchie	"
530	250	Elm Run	"	"
535	1,000	Goose Creek	"	"
540	5,000	Sugar Creek	Pleasant	"
541	500	" "	"	"
545	500	McKim	"	"
550	500	Calcutta	"	"
555	1,500	Belmont	"	"
560	600	Cave Run	"	"
565*	15,000	Bens Run	Tyler	"
566	3,700	" "	"	"
567	500	Arvilla	Pleasants	"

* Used only as receiving tanks.

EXHIBIT No. 16—Continued

Witness Dunlevy

Valvoline Pipe Lines
Crude Oil Tanks and Capacities

Tank No.	Capacity	Location	County	State
575	500	Stewart	Monroe	Ohio
577	500	Trail Run	"	"
581	5,000	New Matamoras	Washington	"
585	2,500	Graysville	Monroe	"
590	500	Sycamore	"	"
595	1,500	Leith	Washington	"
600	1,500	Archers Fork	"	"
605	1,500	Muskingum	"	"
610	1,500	Newport	"	"
615	1,500	Newell Run	"	"
620	250	Kerr	"	"
625	500	Eight Mile	"	"
630	500	Cow Run	"	"
157	378,475	Totals		

[fol. 161] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity

No. 3421

VALVOLINE OIL COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent

Sur Final Hearing

Before Maris, Circuit Judge, and Gibson and Schoonmaker, District Judges

OPINION OF THE COURT—Filed December 3, 1938

MARIS, Circuit Judge:

This is a proceeding to enjoin and set aside an order of the Interstate Commerce Commission. The petition sought an interlocutory injunction. A hearing was had pursuant to Section 47, Title 28, United States Code, which by agree-

ment of the parties is to be considered as the final hearing of the cause. From the evidence the court makes the following

FINDINGS OF FACT

The business of the Valvoline Oil Company (hereinafter referred to as the Valvoline) originated in a partnership formed some seventy years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pa., through which oil was gathered for shipment in tank cars to the refinery at Edgewater, N. J. Later, a refinery was built at Warren and some of the oil was refined [fol. 162] there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, transportation, manufacture, and marketing of petroleum oil and its products, without, however, the right of eminent domain in New Jersey. At the time of its incorporation it was refining about 22,000 barrels of oil per month.

As the demand for lubricating oil grew the pipe line system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pa. The movement of oil in that year amounted to about 55,000 barrels per month. Up to that time all of the oil transported by the Valvoline moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio line was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, W. Va., was purchased and lines were laid in southeastern Ohio. The Valvoline now operates 1,426 miles of pipe line, consisting of 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe. About 50 per cent of the oil transported originates in Pennsylvania, 38 per cent in West Virginia, and 12 per cent in Ohio.

Several other oil pipe lines, both common carrier and private, extend through or are in close proximity to the fields [fol. 163] served by the Valvoline. The common carrier pipe lines are the National Transit Company and the South-West Pennsylvania Pipe Lines, in Pennsylvania, The Eureka Pipe Line Company, in West Virginia, and the Buckeye Pipe

Line Company, in Ohio. None of the companies serves the wells from which the Valvoline receives its oil.

The Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil used by it directly from the producers in the field. It carries, therefore, only oil of which it is the owner. For its manufacturing purposes it prefers a selected grade of a light amber color and some of the oils produced along its lines are not satisfactory because too dark or because they contain undesirable ingredients difficult to eliminate in the refining process. It refuses to buy or admit into its lines oils that do not meet its specifications and the producers thereof must therefore find an outlet through other pipe lines and sales to other refiners. Several instances of rejections of oil by the Valvoline are mentioned in the record. Any producers, however, within reasonable distance of the Valvoline's lines, having oil of the desired quality and not already receiving pipe line service, is afforded a market for his oil through sale to the Valvoline, and if his well is located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny county line, he receives a premium of five cents per barrel over the posted market price.

In November, 1937, the pipe lines of the Valvoline were serving exclusively 9,020 wells, of which 6,291 were in Pennsylvania, 1,370 in West Virginia, and 1,359 in Ohio. These [fol. 164] are generally so-called stripper wells from which the average daily run is 0.20 barrel in Pennsylvania, 0.56 barrel in West Virginia, and 0.25 barrel in Ohio. The oil was then being collected in 2,678 tanks owned by the producers and located on 2,075 farms. Because of the slow accumulation of the oil many of these tanks are drained as infrequently as once a year and in some instances only once in four years. The Valvoline serves actually less than 500 producers or groups but by reason of fractional interests in royalties and leases it has dealings with and accounts to 2,014 royalty owners and 1,751 lease operators for the oil it purchases. These owners and operators have no other present outlet for their oil. According to testimony of record, in the event the Valvoline should refuse to accept it they could receive service from one of the common carrier pipe line companies provided they were able to tender at least five barrels per day per mile of pipe line extension necessary to make the connection. In view of the fact that

the average run of oil from all the wells served by the Valvoline is but little over half a barrel per day, this requirement would undoubtedly deprive many of the producers of a pipe line outlet and market for their oil.

In 1932 economic conditions brought about a curtailment of operations and the refinery at Warren was closed. The Valvoline, instead of limiting its purchases to the quantity of oil that could be refined at East Butler, continued as before to purchase all oil of suitable grade offered, with the result that it received and has continued to receive an excess of oil over its ability to refine. Having no use for this oil in its own operations it entered into arrangements with the Pennsylvania Refining Company at Karns City, [fol. 165] Pa., and with the Ohio Valley Refining Company at St. Mary's, W. Va., under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania and its movement through the Valvoline's lines is intrastate. At the time of the first hearing before the Interstate Commerce Commission some of the oil sold to the Ohio Valley Refining Company originated in Ohio and moved across the Ohio-West Virginia state line. Sale of the Ohio oil was thereafter discontinued and deliveries to the plant at St. Marys now consist exclusively of oil originating in West Virginia. In both instances the oil is sold at delivered prices which include amounts to cover the cost of transportation.

On December 31, 1934 the Commission issued a general order known as Valuation Order No. 26 requiring all pipeline companies subject to the Interstate Commerce Act (49 U. S. C. c. 1) to prepare and file with the Commission maps, charts and schedules of their property not less than sixty days after written notice from the Commission. The Valvoline was served with such notice in January, 1936, whereupon it petitioned the Commission to determine its status, asserting that it was not subject to the act. After hearing the Commission, by Division 1, issued a report on February 2, 1937, holding that the Valvoline was engaged in the transportation of oil by pipe line in interstate commerce, that it was a common carrier subject to the provision of the Interstate Commerce Act and that it should, therefore, comply with Valuation Order No. 26.

Thereafter the Valvoline, having ceased the sale to the Ohio Valley Refining Company of oil transported from

[fol. 166] Ohio to West Virginia, petitioned for and was granted a rehearing before the full Commission and on June 6, 1938 the Commission filed its report again finding that the Valvoline was a common carrier of oil by pipe line and subject to the provisions of the Interstate Commerce Act. The Commission accordingly affirmed its original report and on the same day entered an order directing the Valvoline to comply with the provisions of Valuation Order No. 26 within ninety days. The present suit was brought to set aside this order. After the commencement of the suit the Commission extended the time for compliance with its order for a further period of ninety days.

Discussion

The question for determination in this case is whether the Valvoline Oil Company is a common carrier within the meaning of the Interstate Commerce Act to the extent that the Commission may require it to file maps and other information required for the valuation by the Commission of its pipe line property.

The pertinent provisions of the Interstate Commerce Act as amended, (49 U. S. C. c. 1) under which the Commission acted, are as follows:

"Section 1. (1) That the provisions of this Act shall apply to common carriers engaged in—

(a) • • •

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

• • • • • • •

[fol. 167] (3) The term 'common carrier' as used in this Act shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire • • •

• • • • • • •

Section 19a(a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all

the property owned or used by every common carrier subject to the provisions of this Act * * *

* * * * * * * * *

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, * * *

The provisions of Section 1 above quoted are as amended by Section 400 of the Transportation Act, 1920. Prior to the passage of that Act Section 1 had been amended by the Act of June 29, 1906, c. 3591, 34 Stat. 584, known as the Hepburn Act, so as to include the following provisions relating to pipe line companies:

"Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *

These provisions remained in the Act until Section 1 was re-arranged and rephrased by the Transportation Act, 1920.

In 1906, when the Hepburn Act was passed, the Valvoline was not engaged in the interstate transportation of oil. It did not undertake that business until several years later. When it did so, it thereby assumed the status, by virtue of the provisions of the Hepburn Act, of a common carrier [fol. 168] within the meaning and purpose of the Act. This followed from the very terms of the Act which, as we have seen, provided that the Interstate Commerce Act should apply to any corporation engaged in the interstate transportation of oil by means of pipe lines and that such a corporation should be considered and held to be a common carrier within the meaning and purpose of the Act. In other words, it imposed upon a pipe-line company the status of a common carrier within the meaning of the Act as a

condition of its engaging in the interstate transportation of oil. The Pipe Line Cases, 234 U. S. 548; Pierce Oil Co. v. Phoenix Refg. Co., 259 U. S. 125. The fact that the interstate transportation carried on by the Valvoline involved only oil which it itself owned did not operate to exclude it from the provisions of the Hepburn Act since that Act was not restricted to pipe-line companies which were common carriers in a technical sense but included all pipe-line companies engaged in the interstate transportation of oil with the exception of those merely engaged in transporting oil from their own wells to their own refineries for their own use. The Pipe Line Cases, supra.

It thus appears that the Valvoline had voluntarily assumed the status of a common carrier within the meaning and purpose of the Interstate Commerce Act prior to the passage of the Transportation Act, 1920. That Act, as we have seen, somewhat changed the language of Section 1 of the Interstate Commerce Act. It provided that the Act should apply to common carriers engaged in the interstate transportation of oil by pipe line and that the term "common carrier" as thus used should include "all pipe-line companies; * * *; and all persons, natural or artificial, en- [fol. 169] gaged in such transportation as aforesaid as common carriers for hire." We think that this rephrasing of the language of the Hepburn Act worked no change in its meaning. The language used must be construed to mean that all pipe-line companies even though not technically common carriers are to be deemed common carriers as that term is used in the Act and that in addition all individuals or corporations engaged in transporting oil by pipe line as common carriers for hire are to be deemed common carriers within the meaning of the Act even though technically they are not pipe-line companies. It necessarily follows that the Valvoline continued after the passage of the Transportation Act, 1920, to have the status of a common carrier within the meaning of the Interstate Commerce Act.

Section 19a of the Act authorizes the Commission to value the property of every common carrier subject to its provisions and requires such common carriers to furnish the Commission with such maps and such other information as it may require in aid of such a valuation. Proceeding under this statutory authority the Commission in the present case ordered the Valvoline to furnish information necessary for the purpose of valuing its property. This order, we think, was within its statutory power and was

validly entered against the Valvoline as a common carrier subject to the Commission's jurisdiction.

The Valvoline argues, however, that its operations are so small as compared with the companies involved in the Pipe Line Cases, supra, that the application of the Interstate Commerce Act to its business would be unreasonable [fol. 170] and arbitrary and would, therefore, deprive it of its property without due process of law in violation of the fifth amendment to the Constitution. It is well settled, however, that considerations of the size and importance of the business to be regulated are addressed to legislative discretion and not to legislative power. Brass v. Stoeser, 153 U. S. 391. Furthermore it appears that the business of the Valvoline, while not so extensive as that of the companies involved in the cases referred to, is essentially similar thereto in that it takes all oil meeting its specifications which is offered to it by the owners of the wells connected with its lines and to most of them it offers the only available market for their oil.

It is equally clear that the imposition upon the Valvoline of the status of a common carrier subject to the provisions of the Act as a condition of its engaging in interstate transportation, did not amount to the taking of its property without just compensation in violation of the fifth amendment. We are satisfied that under the Commerce clause the Congress had power to impose such a condition upon those desiring to engage in the interstate transportation of oil by pipe line. See United States v. Delaware & Hudson Co., 213 U. S. 366; Atlantic Coast Line v. Riverside Mills, 219 U. S. 186; The Pipe Line Cases, supra; Edwards v. United States, 91 F. (2d) 767.

We, therefore, decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe-line property and requiring it to co-operate by furnishing relevant data. That is the only question involved in the case. The [fol. 171] case does not involve, and we of course do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act. The court accordingly reaches the following

Conclusions of Law

The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act to the extent

that it is subject to the provisions of Section 19a of the Act.

The order of the Interstate Commerce Commission entered June 6, 1938, directing the Valvoline Oil Company to comply with the provisions of the Commission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.

The petition of the Valvoline Oil Company for an injunction enjoining the enforcement of the said order should be dismissed.

A decree dismissing the petition will be entered.

[fol. 172] [File endorsement omitted.]

[fol. 173] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity

No. 3421

VALVOLINE OIL COMPANY, Petitioner,

v.

THE UNITED STATES OF AMERICA, Defendant, and INTERSTATE COMMERCE COMMISSION, Intervening Defendant

FINAL DECREE—Filed December 29, 1938

This cause having come on for final hearing before the special court of three judges, constituted as required by the Act of October 22, 1913 (c. 32, 38 Stat. 219, U. S. C., Tit. 28, Sec. 47), and the court upon consideration of the evidence and arguments of counsel orally and on brief, having concluded, found and determined that the petition for a temporary and permanent injunction should be dismissed for want of equity, it is

Ordered, Adjudged and Decreed, That the petition for a temporary and permanent injunction be, and the same is hereby, dismissed for want of equity.

This 29th day of December, 1938.

Albert B. Maris, United States Circuit Judge. R. M. Gibson, United States District Judge. F. P. Schoonmaker, United States District Judge.

[fol. 174] [File endorsement omitted.]

[fol. 175] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ORDER STAYING THE ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed January 3, 1939

Now comes the Valvoline Oil Company, the petitioner above named, by its attorneys, Brandon and Brandon of Butler, Pennsylvania, and Harry S. Elkins of Washington, D. C., and respectfully moves the Court to enter an order as part of its final decree in this case, or contemporaneous with that final decree, staying and suspending the order of the Interstate Commerce Commission pending the perfecting and determination of an appeal to the Supreme Court of the United States and for reasons therefor respectfully represents:

I

On December 3, 1938, this Court, acting through Judges Maris, Gibson and Schoonmaker, filed an opinion announcing that the bill would be dismissed.

II

Your petitioner being advised that it has the right under the statutes to appeal to the Supreme Court of the United States, it proposes to exercise that right promptly after the entry of the final decree dismissing the bill.

[fol. 176] III

If the order of the Interstate Commerce Commission shall become effective upon the entry of the decree dismissing the bill, and if upon appeal the Supreme Court of the United States finds that the order of the Commission should be enjoined, then your petitioner would be irreparably damaged in the following particulars, to wit:

(a) Valuation Order No. 26 of the Interstate Commerce Commission (Exhibit "A") which may become effective with the Commission's order, requires a great deal of information and data. Many of the Valvoline Oil Company's lines, for example, were built as circumstances seemed to require and, if records were kept, they have disappeared. Pipe lines have been operated by Valvoline as

private lines for sixty years and extensions have been built and acquired. The Company could not reasonably have foreseen that eventually it might be considered a public utility and that its records with respect to extensions and reconstructions and operations would be required by a regulatory authority. The information required if this Valuation Order of the Interstate Commerce Commission is held valid and binding upon the Valvoline Oil Company, will be very expensive to obtain, and will require many weeks' work to compile the necessary data.

(b) The Valvoline Oil Company has operated pipe lines for its own private use*d* for more than sixty years and since 1912 has been transporting oil by pipe line across state lines. The Interstate Commerce Commission never questioned during all these years the Valvoline's right to carry on its business as a common carrier until January, 1936, when the petitioner was called upon to furnish the [fol. 177] data and comply with Valuation Order No. 26, this being the first attempt on the part of the Interstate Commerce Commission to assert jurisdiction over the operations of the petitioner.

(c) The question of the private status of the petitioner's operations has never been questioned by the three states in which it operates, namely, Pennsylvania, West Virginia and Ohio. There has never been any demand from the public for any service by the petitioner, nor is there any question of rates involved, no public or private rights have been shown to be violated, and no demand has been made on the petitioner for any kind of service whatsoever.

(d) The present operation of the petitioner is of long standing, and if it should be determined on appeal that the Interstate Commerce Commission does not have jurisdiction over the operations of the petitioner, then irreparable damage might and probably would be occasioned by the present enforcement of the order of the Interstate Commerce Commission.

(e) The fact that the effective date of the order of the Interstate Commerce Commission has been extended by the Commission without harm or injury to any party, cause or interest, shows clearly that no special benefit will be derived by having the petitioner undertake to comply with

the Valuation Order of the Interstate Commerce Commission until after final determination of the question involved. The Interstate Commerce Commission in giving the petitioner ninety days to comply with the order from the date of June 6, 1938, and which period was later extended by [fol. 178] the Commission at the request of this court for a period of one hundred and eighty days, expiring December 5, 1938, shows that the Interstate Commerce Commission contemplated that it would take at least three months on the part of the petitioner to gather together and submit the data necessary to carry out the provisions of the Valuation Order. As it now stands the Valvoline Oil Company will be unable to comply with the terms of the Valuation Order unless it is given additional time or there is a stay granted pending final determination.

(f) No taxes or other charges that would become in arrear or payment thereof delayed if the order for stay is made.

Wherefore, your petitioner prays that the Order of the Interstate Commerce Commission be stayed and suspended pending the perfecting and determination of the appeal to the Supreme Court of the United States. Your petitioner furthermore prays leave to introduce evidence before this Court if it shall be deemed advisable and necessary tending to show that irreparable damage would be done to your petitioner if the Order of the Interstate Commerce Commission be not stayed pending the appeal to the Supreme Court of the United States.

Harry S. Elkins, Branden & Branden, Attorneys for the Petitioner, Butler, Pa.

[fol. 179] *Duly sworn to by C. W. Luton. Jurat omitted in printing.*

[fol. 180] ORDER STAYING THE ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION

Whereas, by a petition filed the fifth day of August, 1938, the petitioner, the Valvoline Oil Company, prayed this Court to set aside and annul an order of the Interstate Commerce Commission entered against it, and also prayed for an injunction to restrain the Interstate Commerce Commission from enforcing its order, and

Whereas, a hearing was held on the 29th day of Septem-

ber, 1938, which by agreement of parties was to be considered as a final hearing, and

Whereas, on the 3rd day of December, 1938, an opinion was filed by this Court sustaining the Order of the Interstate Commerce Commission insofar as it applies to provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property, and requiring it to cooperate by furnishing relevant data, and calling for the filing of a final decree dismissing the bill, which was entered on the — day of December, 1938.

Now, Therefore, The Court finds, based upon the evidence submitted to it and from the facts revealed in the record, that if the operation of the said Order is not stayed or suspended during the pendency of this litigation that irreparable damage will ensue to the petitioner; and further, that the enforcement of the Order might disrupt an established course of operations of the petitioner which has been known to the Interstate Commerce Commission and which [fol. 181] it has never undertaken to control or exercise jurisdiction thereof until the present proceeding; and that a stay can be allowed without prejudice to the rights of the respondent or the Interstate Commerce Commission, intervening respondent, or any person, and that the enforcement thereof, if found to be unlawful, would work great hardship and damage.

It is therefore ordered, adjudged and decreed that the said order of the Interstate Commerce Commission, in accordance with Valuation Order No. 26, be and is hereby stayed and suspended until the determination of this case on appeal to the Supreme Court of the United States and until further order of this Court.

Dated this — day of ——, 19—.

——, ——.

[fol. 182] [File endorsement omitted.]

[fol. 183] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING THE ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed January 3, 1939

Whereas, by a petition filed the fifth day of August, 1938, the petitioner, the Valvoline Oil Company, prayed this court

to set aside and annul an order of the Interstate Commerce Commission entered against it, and also prayed for an injunction to restrain the Interstate Commerce Commission from enforcing its order, and

Whereas, a hearing was held on the 29th day of September, 1938, which by agreement of parties was to be considered as a final hearing, and

Whereas, on the 3rd day of December, 1938, an opinion was filed by this court sustaining the order of the Interstate Commerce Commission insofar as it applies to provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property, and requiring it to cooperate by furnishing relevant data, and calling for the filing of a final decree dismissing the bill, which was [fol. 184] entered on the 29th day of December, 1938,

Now Therefore, the Court finds, based upon the evidence submitted to it and from the facts revealed in the record, that if the operation of the said Order is not stayed or suspended during the pendency of this litigation that irreparable damage will ensue to the petitioner; and further, that the enforcement of the Order might disrupt an established course of operations of the petitioner which has been known to the Interstate Commerce Commission and which it has never undertaken to control or exercise jurisdiction thereof until the present proceeding; and that a stay can be allowed without prejudice to the rights of the respondent or the Interstate Commerce Commission, intervening respondent, or any person, and that the enforcement thereof, if found to be unlawful, would work great hardship and damage.

It is therefore ordered, adjudged and decreed that the said order of the Interstate Commerce Commission, in accordance with Valuation Order No. 26, be and is hereby stayed and suspended until the determination of this case on appeal to the Supreme Court of the United States and until further order of this court.

Dated this 3rd day of January, 1939.

By the Court.

Albert B. Maris, Circuit Judge. R. M. Gibson, District Judge. F. P. Schoonmaker, District Judge. (G.)

[fol. 185] [File endorsement omitted.]

[fol. 186] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 20, 1939

To the Honorable, the Judges of the District Court of the United States for the Western District of Pennsylvania:

The Valvoline Oil Company, Petitioner-Plaintiff in the above entitled case, feeling itself aggrieved by the Final Decree entered by this Court on December 29, 1938, prays an appeal from said decree to the Supreme Court of the United States in accordance with the statutory requirements.

The particulars wherein the plaintiff considers the decree erroneous are set forth in the Assignments of Error accompanying this petition and to which reference is hereby made.

[fol. 187] Said plaintiff prays that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

J. Campbell Brandon, Savings & Trust Building, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company.

[fol. 188] *Duly sworn to by C. W. Luton. Jurat omitted in printing.*

[fol. 189] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 20, 1939

In the above entitled cause the Valvoline Oil Company, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the Final Decree of this Court in this case entered the 29th day of December, 1938, and having also made and filed assignments of error and a statement of jurisdiction, and having in all respects conformed to the Statutes and Rules of Court in such case made and provided, it is

Ordered and Decreed that the appeal be, and the same is, hereby allowed as prayed for this 20th day of February, 1939.

R. M. Gibson, D. J. F. P. Schoonmaker, D. J.

[fol. 190] In United States District Court

[Title omitted]

Assignments of Error—Filed February 20, 1939

The Valvoline Oil Company, plaintiff in the above entitled case, now comes and files the following assignments of error in connection with its petition for an appeal from the final decree entered by this Court on December 29, 1938, to the Supreme Court of the United States:

The District Court erred—

1. In entering the decree dismissing the petition of the plaintiff for a temporary and permanent injunction for want of equity.

2. In holding that the Valvoline Oil Company is a common carrier engaged in interstate transportation of oil by pipe lines within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.

[fol. 191] 3. In holding that the Order of the Interstate Commerce Commission entered June 6, 1938, directing the Valvoline Oil Company to comply with the provisions of the Commission's Valuation Order No. 26, was within the Commission's statutory powers and was constitutional.

4. In holding that the petition of the Valvoline Oil Company for an injunction enjoining the enforcement of the order should be dismissed.

5. In holding that the Interstate Commerce Commission had any authority or control over the operations of the Valvoline Oil Company.

6. In refusing to find that the Valvoline Oil Company was a purely private corporation not engaged in any interstate commerce in which the public was interested nor was subject to any regulatory provisions of the Interstate Commerce Act.

7. In failing and refusing to give and accord proper legal force and effect to the evidence of record in this case.

J. Campbell Brandon, Savings & Trust Building, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company.

[fol. 192] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed February 20, 1939

To United States of America, Respondent, Interstate Commerce Commission, Intervening Respondent:

Please take notice that pursuant to the statutes and rules of court in such case made and provided the Valvoline Oil Company, plaintiff in the above entitled cause, does hereby appeal to the Supreme Court of the United States from the Final Decree of the District Court made and entered on the 29th day of December, 1938, which sustained the Order of the Interstate Commerce Commission for the valuation of the properties of the Valvoline Oil Company. Attached hereto is a copy of the petition for appeal and order allowing appeal, the assignments of error and the statement as to jurisdiction. Your attention is further directed to the provisions of Rule 12, paragraph 3.

J. Campbell Brandon, Savings & Trust Building, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company.

[fol. 193] [File endorsement omitted.]

[fol. 194] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE TO THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA—Filed March 24, 1939

To the Honorable, the Attorney General of the Commonwealth of Pennsylvania:

Pursuant to Urgent Deficiencies Act of October 22, 1913, 38 Stat. 221, you are hereby notified that the plaintiff, the

Valvoline Oil Company, in the above entitled cause has taken an appeal to the Supreme Court of the United States from the final decree of the United States District Court entered December 29, 1938, and the order allowing the appeal makes the same returnable within forty (40) days from the date thereof.

J. Campbell Brandon, Savings & Trust Building, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company.

Service of a copy of the foregoing notice is hereby acknowledged this 20th day of March, 1939.

Claude T. Reno, Attorney General of the Commonwealth of Pennsylvania.

[fol. 195] [File endorsement omitted.]

[fols. 196-197] Citation, in usual form showing service on Elmer B. Collins et al., filed February 20, 1939, omitted in printing.

[fol. 198] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 24, 1939

To the Clerk of the Above Entitled Court:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Supreme Court of the United States pursuant to the appeal to said court heretofore taken and incorporate in said transcript the following:

1. Bill of Complaint for injunction to Restrain the Interstate Commerce Commission, including all exhibits attached thereto as a part of said bill.
2. Order in said cause convening a three judge court.
3. Answer of United States of America to said Bill of Complaint.

4. Intervention of Interstate Commerce Commission.
[fol. 199] 5. Amendment to Bill of Complaint.
6. Record of testimony and exhibits before the Interstate Commerce Commission in original form as introduced in evidence before the Court as Exhibit No. 1, consisting of testimony pages 1 to 268 inclusive and exhibits numbered 1 to 16 inclusive.
7. Narrative statement of evidence before the Interstate Commerce Commission.
8. Stipulation in re. Interstate Commerce Commission record before the three judge Court.
9. Opinion of the Court.
10. Final Decree.
11. Petition for Order to Stay Interstate Commerce Commission Order.
12. Order of Court Staying the Enforcement of the Order.
13. Notice of appeal with acknowledgment of service.
14. Petition for appeal.
15. Assignments of Error.
16. Statement as to Jurisdiction.
17. Notice pursuant to Rule 12 of Supreme Court and acknowledgment of service thereof.
18. Notice to Attorney General of Pennsylvania.
19. Order allowing appeal.
20. Citation on appeal.
21. This præcipe for transcript of record and acknowledgment thereof.
22. Clerk's certificate.

J. Campbell Brandon, Savings & Trust Building, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company.

[fol. 200] We have notice of filing this præcipe and acknowledge receipt of copy of same.

Robert H. Jackson, Solicitor General of the U. S.; Thomas M. Ross, Atty., Interstate Commerce Commission.

[fol. 201] [File endorsement omitted.]

[fols. 202-203] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 204] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON BY APPELLANT AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed April 13, 1939

The Valvoline Oil Company, Appellant, will rely upon the following points in brief and oral argument before this Court on its appeal in the above entitled case:

I

The Valvoline Oil Company is not a common carrier under the terms and provisions of the Interstate Commerce Act and its amendments. As such, it has never engaged in transportation for hire in interstate commerce of petroleum by pipe line.

II

The Interstate Commerce Commission had no authority in law to direct the compliance with its Valuation Order No. 26 by the Valvoline Oil Company, and the Court should have granted the injunction and the relief prayed for.

[fols. 205-206]

III

The Valvoline Oil Company is a purely private corporation and has never acted as a common carrier for hire or held itself out to perform any public service.

IV

There is no competent or substantial evidence to support the order of the Interstate Commerce Commission.

V

The provisions of the Interstate Commerce Act insofar as they apply to the operations of the Valvoline Oil Company are unconstitutional.

The Appellant further states that the entire record in this case is filed and is necessary for the consideration of the foregoing points, and that the record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court excepting those parts specified in

the Stipulation of Counsel in re. printing of the record as filed in this Court.

J. Campbell Brandon, Harry S. Elkins, Attorneys for Appellant.

[fol. 207] [File endorsement omitted.]

[fol. 208] IN SUPREME COURT OF THE UNITED STATES

STIPULATION OF COUNSEL IN RE RECORD—Filed March 30, 1939

It is hereby stipulated and agreed by and between counsel for the plaintiff and defendants in the above entitled cause for the purpose of settling the record for the appeal to the Supreme Court of the United States that:

1. The narrative statement of testimony attached hereto is a true and correct transcript in narrative form of the oral testimony contained in the certified copy of the record of proceedings before the Interstate Commerce Commission introduced in evidence in this cause.

2. The entire record of the testimony and exhibits before the Interstate Commerce Commission introduced in evidence in this court as Exhibit No. 1 (consisting of Pages 1 to 268 and Exhibits 1 to 16 inclusive) shall be transmitted in original form as certified by the Interstate Commerce Commission by the Clerk of this Court to the Clerk of the Supreme Court of the United States, and shall there be [fols. 209-210] retained as a part of the record in this cause, and may be referred to by the Supreme Court and by counsel for appellant and appellees in their briefs and upon oral argument of the cause in the Supreme Court.

3. The maps marked Exhibits No. 1, 2, 6, 8 and Exhibit No. 15, a chart showing Total Pipe Line Mileage and Crude Oil Transported in 1936 and Graph of Percentages, shall not be printed, but the appellant shall furnish to the Clerk for the use of the Court eleven (11) accurate copies of each of said exhibits bound together and additional copies for appellees' counsel.

4. The following exhibits shall be printed in the record: Exhibits No. 3, 4, 5, 7, 9, 10, 11 (omitting pages 1 to 25 and printing only the summary, page 26), 12, 13, 14 (omit-

ting pages 1 to 18 and printing only pages 19 and 20 covering lease owners operating 5 tanks or more), 16.

J. Campbell Brandon, Savings & Trust Building, Butler, Pennsylvania; Harry S. Elkins, Munsey Building, Washington, D. C., Counsel for Valvoline Oil Company. Frank Coleman, Special Assistant to the Attorney General; Thomas M. Ross, for Interstate Commerce Commission.

[fol. 211] [File endorsement omitted.]

Endorsed on cover: File No. 43,310. W. Pennsylvania, D. C. U. S. Term No. 825. Valvoline Oil Company, Appellant, vs. The United States of America and Interstate Commerce Commission. Filed March 30, 1939. Term No. 825, O. T. 1938.

(1934)

FILE COPY

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FILED
MAR 30 1939
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 825 25

VALVOLINE OIL COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION.

J. CAMPBELL BRANDON,
HARRY S. ELKINS,
Counsel for Appellant.

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Statutes Cited.

Act of Congress of June 29, 1906, Hepburn Amendment, Act to Regulate Commerce, as subsequently amended, U. S. C. A. 49, Section 1, paragraphs 1(b) and 3, and Section 19a	2
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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity

No. 3421

VALVOLINE OIL COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent,

AND

INTERSTATE COMMERCE COMMISSION,
Intervening Respondent.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the Valvoline Oil Company submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the final decree complained of is conferred by:

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 543, U. S. C., Title 28, Sec. 45a);

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, par. (4); U. S. C., Title 28, Sec. 345);

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219; U. S. C., Title 28, Secs. 45 and 47a);

Act of Congress, June 29, 1906, Hepburn Amendment, Act to Regulate Commerce, as subsequently amended, U. S. C. A., 49, Section 1, paragraphs 1 (b) and 3, and Section 19a.

B. The statute of the United States, the construction of which is involved herein, is the Act of Congress, June 29, 1906, Hepburn Act, as amended (now known as the Interstate Commerce Act, Part 1 (U. S. C. A. 49). The pertinent sections of the Act read as follows:

> SEC. 1. * * * (1) That the provisions of this part shall apply to common carriers engaged in— * * *
>
> (b) The transportation of oil or other commodity except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *
>
> (3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. * * *
>
> SEC. 19. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, * * *

C. The decree sought to be reviewed was entered December 29, 1938, and the petition for appeal was presented to the United States Court for the Western District of Pennsylvania on the 20th day of February, 1939.

D. Plaintiff brought this bill in equity to restrain and enjoin the Interstate Commerce Commission from enforc-

ing its revised Valuation Order No. 26 in a proceeding before the Commission entitled *In the Matter of Valuation of Valvoline Pipe Lines, Valuation Docket No. 1202*, in accordance with the opinion of the Commission holding that the Valvoline Pipe Lines was a common carrier, 47 Val. Rep. 534 and 48 Val. Rep. 10.

The valuation order based on Section 19a of the Interstate Commerce Act applies to all common carriers. The Commission found from the evidence that the Valvoline was a common carrier within the terms of the act and ordered it to submit data for the valuation of its lines.

The evidence shows that the Valvoline operates two refineries in Pennsylvania. In connection therewith and in order to obtain an independent and constant supply of a certain type of crude it maintains a gathering system in Pennsylvania, West Virginia and Ohio for its refineries at Butler, Pennsylvania, and Warren, Pennsylvania. The Valvoline is engaged solely in the refining of crude oil and the marketing of the refined products. For manufacture into such products, it purchases and transports only one type of crude oil, and no oil is purchased unless by petitioner's analysis it is found to meet its predetermined specifications. It does not transport any oil for hire and carries its own oil exclusively. The pipe lines were laid near its refineries and extended to other fields only when necessary to get the type of oil needed to meet its requirements. The Valvoline operates in fields that are served by large common carrier pipe lines and transports a very small fractional part of the oil produced in the Pennsylvania, West Virginia and Ohio fields. It ordinarily pays the uniform price posted by the buying agencies over which it has no control. But when necessary to induce sales by producers and to secure the particular type of crude it uses, it has often paid a premium over the current, posted, uniform price.

The Valvoline Pipe Line is not a corporation but is operated as a department of the Valvoline Oil Company. Neither the oil company nor the pipe line has the right of eminent domain, and has never attempted to exercise such a right. It has never offered to transport oil for hire for any individual or for the public in general. No one has ever asked or demanded transportation service from it.

The pipe line department has been privately operated for over sixty years as an integral part of the refinery. During that time no agency or commission, State or Federal, has ever undertaken to control or supervise its operations until the present proceeding.

With these facts all in evidence without contradiction, the Interstate Commerce Commission found the Valvoline to be a common carrier within the provisions of the Act on the ground that it purchased oil from a large number of owners, and the public interest was therefore affected.

The District Court limited its opinion to the question whether or not the pipe line was subject to the provisions of Section 19a of the Act (Valuation).

It said:

> "We, therefore, decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property and requiring it to cooperate by furnishing relevant data. That is the only question involved in the case. The case does not involve and we, of course, do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act. The court accordingly reaches the following conclusions of law:
>
> "The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.
>
> "The order of the Interstate Commerce Commission entered June 6, 1938, directing the Valvoline Oil Com-

pany to comply with the provisions of the Commission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.—''

By the final decree of the court the petition for an injunction is dismissed and the Valvoline is directed to submit data for the valuation of its properties. The District Court on petition by the plaintiffs entered a decree to stay the effective date of the Interstate Commerce Commission's order pending final determination by the Supreme Court. But by force of other sections of the Act and the definition of the term ''common carrier'', it might also be subject to all the obligations imposed by the Act upon common carriers by pipe line.

The practices which resulted in the pipe line amendment in the Hepburn Act and in the finding that pipe lines in *The Pipe Line Cases,* 234 U. S. 548, 34 S. C. 956, 58 L. Ed. 1459, were common carriers, were not shown to exist by this record.

E. The application of the provisions of the Interstate Commerce Act to pipe lines has not been considered by this Court since 1914, *The Pipe Line Cases, supra.* Since the consideration of these cases, the Act was amended by the Transportation Act, 1920, Sec. 400, 41 Stat. 474. As an amendment to the definition of common carriers the very significant words ''for hire'' have been added.

The appellant's pipe lines were constructed, have been, and are used, as facilities in the refining of crude oil, and are incidental to such use. The interstate transportation of oil by its owner through its pipe line to its refinery to be refined is private transportation. *Pipe Line Cases, supra.* (Uncle Sam Oil Company.) To impose upon such a pipe line the burdens and duties required of common carriers by pipe line for hire is a taking of private property without due process.

The record abundantly shows that producers of crude oil are not required to sell to appellant's refinery; that producers on its lines have access to other modes of transportation of crude oil to markets and may also readily use existing common carrier pipe lines; that appellant must compete generally in a seller's market to obtain adequate supplies of the type of crude oil used by its refinery; that appellant has had and can have no monopoly in either the purchase or transportation of the crude oils produced on its lines.

The questions presented are substantial and of great importance to all refining companies operating private pipe line interstate and to the Interstate Commerce Commission in determining its jurisdiction over such pipe companies for the purposes of valuation, rate regulations and other requirements of the Transportation Act of 1920.

F. The following decisions sustain the jurisdiction of the Supreme Court to entertain an appeal in this case:

United States v. *American Sheet and Tin Plate Co.*, 301 U. S. 402, 57 S. Ct. 804;

B. & O. R. R. Co. et al. v. *United States*, 304 U. S. 58, 58 S. C. 767;

United States v. *Pan-American Petroleum Co.*, 304 U. S. 156, 58 S. Ct. 771;

Escanaba & Lake Superior R. R. v. *United States*, 303 U. S. 314, 58 S. Ct. 556.

G. A copy of the opinion of the District Court is appended hereto.

Respectfully submitted,

J. Campbell Brandon,
Savings & Trust Bldg.,
Butler, Pennsylvania;
Harry S. Elkins,
Munsey Building,
Washington, D. C.,
Counsel for Valvoline Oil Company.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

In Equity.

No. 3421.

VALVOLINE OIL COMPANY, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent* and INTERSTATE COMMERCE COMMISSION, *Intervening Respondent*.

SUR FINAL HEARING.

Before Maris, Circuit Judge, and Gibson and Schoonmaker, District Judges.

Opinion of the Court.

December 3, 1938.

MARIS, *Circuit Judge:*

This is a proceeding to enjoin and set aside an order of the Interstate Commerce Commission. The petition sought an interlocutory injunction. A hearing was had pursuant to Section 47, Title 28, United States Code, which by agreement of the parties is to be considered as the final hearing of the cause. From the evidence the court makes the following

Findings of Fact.

The business of the Valvoline Oil Company (hereinafter referred to as the Valvoline) originated in a partnership formed some seventy years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pa., through which oil was gathered for shipment in tank cars to the refinery at Edgewater, N. J. Later, a refinery was built at Warren and some of the oil was re-

fined there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, transportation, manufacture, and marketing of petroleum oil and its products, without, however, the right of eminent domain in New Jersey. At the time of its incorporation it was refining about 22,000 barrels of oil per month.

As the demand for lubricating oil grew the pipe line system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pa. The movement of oil in that year amounted to about 55,000 barrels per month. Up to that time all of the oil transported by the Valvoline moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio line was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, W. Va., was purchased and lines were laid in southeastern Ohio. The Valvoline now operates 1,426 miles of pipe line, consisting of 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe. About 50 per cent of the oil transported originates in Pennsylvania, 38 per cent in West Virginia and 12 per cent in Ohio.

Several other oil pipe lines, both common carrier and private, extend through or are in close proximity to the fields served by the Valvoline. The common carrier pipe lines are the National Transit Company and the South-West Pennsylvania Pipe Lines, in Pennsylvania, The Eureka Pipe Line Company, in West Virginia, and the Buckeye Pipe Line Company, in Ohio. None of the companies serves the wells from which the Valvoline receives its oil.

The Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil used by it directly from the producers in the field. It carries, therefore, only oil of which it is the owner. For its manufacturing purposes it prefers a selected grade of a light amber color and some of the oils produced along its lines are not satisfactory because too dark or because they contain undesirable ingredients difficult to eliminate

in the refining process. It refuses to buy or admit into its lines oils that do not meet its specifications and the producers thereof must therefore find an outlet through other pipe lines and sales to other refiners. Several instances of rejections of oil by the Valvoline are mentioned in the record. Any producer, however, within reasonable distance of the Valvoline's lines, having oil of the desired quality and not already receiving pipe line service, is afforded a market for his oil through sale to the Valvoline, and if his well is located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny county line, he receives a premium of five cents per barrel over the posted market price.

In November, 1937, the pipe lines of the Valvoline were serving exclusively 9,020 wells, of which 6,291 were in Pennsylvania, 1,370 in West Virginia, and 1,359 in Ohio. These are generally so-called stripper wells from which the average daily run is 0.20 barrel in Pennsylvania, 0.56 barrel in West Virginia, and 0.25 barrel in Ohio. The oil was then being collected in 2,678 tanks owned by the producers and located on 2,075 farms. Because of the slow accumulation of the oil many of these tanks are drained as infrequently as once a year and in some instances only once in four years. The Valvoline serves actually less than 500 producers or groups but by reason of fractional interests in royalties and leases it has dealings with and accounts to 2,014 royalty owners and 1,751 lease operators for the oil it purchases. These owners and operators have no other present outlet for their oil. According to testimony of record, in the event the Valvoline should refuse to accept it they could receive service from one of the common carrier pipe lines companies provided they were able to tender at least five barrels per day per mile of pipe line extension necessary to make the connection. In view of the fact that the average run of oil from all the wells served by the Valvoline is but little over half a barrel per day, this requirement would undoubtedly deprive many of the producers of a pipe line outlet and market for their oil.

In 1932 economic conditions brought about a curtailment of operations and the refinery at Warren was closed. The Valvoline, instead of limiting its purchases to the quantity

of oil that could be refined at East Butler, continued as before to purchase all oil of suitable grade offered, with the result that it received and has continued to receive an excess of oil over its ability to refine. Having no use for this oil in its own operations it entered into arrangements with the Pennsylvania Refining Company at Karns City, Pa., and with the Ohio Valley Refining Company at St. Marys, W. Va., under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania and its movement through the Valvoline's lines is intrastate. At the time of the first hearing before the Interstate Commerce Commission some of the oil sold to the Ohio Valley Refining Company originated in Ohio and moved across the Ohio-West Virginia State line. Sale of the Ohio oil was thereafter discontinued and deliveries to the plant at St. Marys now consists exclusively of oil originating in West Virginia. In both instances the oil is sold at delivered prices which include amounts to cover the cost of transportation.

On December 31, 1934, the Commission issued a general order known as Valuation Order No. 26 requiring all pipeline companies subject to the Interstate Commerce Act (49 U. S. C. c. 1) to prepare and file with the Commission maps, charts and schedules of their property not less than sixty days after written notice from the Commission. The Valvoline was served with such notice in January, 1936, whereupon, it petitioned the Commission to determine its status, asserting that it was not subject to the act. After hearing the Commission, by Division 1, issued a report on February 2, 1937, holding that the Valvoline was engaged in the transportation of oil by pipe line in interstate commerce, that it was a common carrier subject to the provisions of the Interstate Commerce Act and that it should, therefore, comply with Valuation Order No. 26.

Thereafter the Valvoline, having ceased the sale to the Ohio Valley Refining Company of oil transported from Ohio to West Virginia, petitioned for and was granted a rehearing before the full Commission and on June 6, 1938, the Commission filed its report again finding that the Valvoline was a common carrier of oil by pipe line and subject to the pro-

visions of the Interstate Commerce Act. The Commission accordingly affirmed its original report and on the same day entered an order directing the Valvoline to comply with the provisions of Valuation Order No. 26 within ninety days. The present suit was brought to set aside this order. After the commencement of the suit the Commission extended the time for compliance with its order for a further period of ninety days.

Discussion.

The question for determination in this case is whether the Valvoline Oil Company is a common carrier within the meaning of the Interstate Commerce Act to the extent that the Commission may require it to file maps and other information required for the valuation by the Commission of its pipe line property.

The pertinent provisions of the Interstate Commerce Act as amended (49 U. S. C. c. 1), under which the Commission acted, are as follows:

"SECTION 1. (1) That the provisions of this Act shall apply to common carriers engaged in—

(a) • • •

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

• • • • • • • •

(3) The term 'common carrier' as used in this Act shall include all pipe-line companies; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. • • •

SECTION 19a (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or caused by every common carrier subject to the provisions of this Act. • • •

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier * * *."

The provisions of Section 1 above quoted are as amended by Section 400 of the Transportation Act, 1920. Prior to the passage of that Act Section 1 had been amended by the Act of June 29, 1906, c. 3591, 34 Stat. 584, known as the Hepburn Act, so as to include the following provisions relating to pipe-line companies;

"SEC. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe line, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *."

These provisions remained in the Act until Section 1 was re-arranged and rephrased by the Transportation Act, 1920.

In 1906, when the Hepburn Act was passed, the Valvoline was not engaged in the interstate transportation of oil. It did not undertake that business until several years later. When it did so, it thereby assumed the status, by virtue of the provisions of the Hepburn Act, of a common carrier within the meaning and purpose of the Act. This followed from the very terms of the Act which, as we have seen, provided that the Interstate Commerce Act should apply to any corporation engaged in the interstate transportation of oil by means of pipe lines and that such a corporation should be considered and held to be a common carrier within the meaning and purpose of the Act. In other words, it imposed upon a pipe-line company the status of a common

carrier within the meaning of the Act as a condition of its engaging in the interstate transportation of oil. The Pipe Line Cases, 234 U. S. 548; Pierce Oil Co. *v.* Phoenix Refg. Co., 259 U. S. 125. The fact that the interstate transportation carried on by the Valvoline involved only oil which it itself owned did not operate to exclude it from the provisions of the Hepburn Act since that Act was not restricted to pipe-line companies which were common carriers in a technical sense but included all pipe-line companies engaged in the interstate transportation of oil with the exception of those merely engaged in transporting oil from their own wells to their own refineries for their own use. The Pipe Line Cases, *supra.*

It thus appears that the Valvoline had voluntarily assumed the status of a common carrier within the meaning and purposes of the Interstate Commerce Act prior to the passage of the Transportation Act, 1920. That Act, as we have seen, somewhat changed the language of Section 1 of the Interstate Commerce Act. It provided that the Act should apply to common carriers engaged in the interstate transportation of oil by pipe line and that the term "common carrier" as thus used should include "all pipe-line companies; * * *; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." We think that this rephrasing of the language of the Hepburn Act worked no change in its meaning. The language used must be construed to mean that all pipe-line companies even though not technically common carriers are to be deemed common carriers as that term is used in the Act and that in addition all individuals or corporations engaged in transporting oil by pipe line as common carriers for hire are to be deemed common carriers within the meaning of the Act even though technically they are not pipe-line companies. It necessarily follows that the Valvoline continued after the passage of the Transportation Act, 1920, to have the status of a common carrier within the meaning of the Interstate Commerce Act.

Section 19a of the Act authorized the Commission to value the property of every common carrier subject to its provi-

sions and requires such common carriers to furnish the Commission with such maps and such other information as it may require in aid of such a valuation. Proceeding under this statutory authority the Commission in the present case ordered the Valvoline to furnish information necessary for the purpose of valuing its property. This order, we think, was within its statutory power and was validly entered against the Valvoline as a common carrier subject to the Commission's jurisdiction.

The Valvoline argues, however, that its operations are so small as compared with the companies involved in the Pipe Line Cases, *supra*, that the application of the Interstate Commerce Act to its business would be unreasonable and arbitrary and would, therefore, deprive it of its property without due process of law in violation of the fifth amendment to the Constitution. It is well settled, however, that consideration of the size and importance of the business to be regulated are addressed to legislative discretion and not to legislative power. Brass *v.* Stoesser, 153 U. S. 391. Furthermore it appears that the business of the Valvoline, while not so extensive as that of the companies involved in the cases referred to, is essentially similar thereto in that it takes all oil meeting its specifications which is offered to it by the owners of the wells connected with its lines and to most of them it offers the only available market for their oil.

It is equally clear that the imposition upon the Valvoline of the status of a common carrier subject to the provisions of the Act as a condition of its engaging in interstate transportation, did not amount to the taking of its property without just compensation in violation of the fifth amendment. We are satisfied that under the Commerce clause the Congress had power to impose such a condition upon those desiring to engage in the interstate transportation of oil by pipe line. See United States *v.* Delaware & Hudson Co., 213 U. S. 366; Atlantic Coast Line *v.* Riverside Mills, 219 U. S. 186; The Pipe Line Cases, *supra;* Edwards *v.* United States, 91 F. (2d) 767.

We, therefore, decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe-line property

and requiring it to co-operate by furnishing relevant data. That is the only question involved in the case. The case does not involve, and we of course do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act. The court accordingly reaches the following

Conclusions of Law.

The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.

The order of the Interstate Commerce Commission entered June 6, 1938 directing the Valvoline Oil Company to comply with the provisions of the Commission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.

The petition of the Valvoline Oil Company for an injunction enjoining the enforcement of the said order should be dismissed.

A decree dismissing the petition will be entered.

SEP 27 1939
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 25

VALVOLINE OIL COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF ON BEHALF OF THE VALVOLINE OIL COMPANY.

J. CAMPBELL BRANDON,
Butler, Pennsylvania.
HARRY S. ELKINS,
Munsey Building,
Washington, D. C.
Counsel for Valvoline Oil Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 25

VALVOLINE OIL COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

BRIEF ON BEHALF OF THE VALVOLINE OIL COMPANY.

Opinions.

The opinion of the specially constituted District Court for the Western District of Pennsylvania is reported in *Valvoline Oil Company* v. *United States and Interstate Commerce* Commission in 25 F. Suppl. 460 and appears in the record p. 112.

The report of Division One of the Interstate Commerce Commission requiring the submission of data for valuation purposes is reported in 47 Val. Rep. 534 and is printed in the record p. 12. The report of the Commission on Further Hearing is reported in 48 Val. Rep. 10 and is printed in the record p. 23.

Jurisdiction.

The final decree of the specially constituted court (R. 120) was entered December 29, 1938. The petition for appeal was filed (R. 126) February 20, 1939, and an order allowing the appeal was made the same day.

The jurisdiction of this Court is founded upon the following statutes:

Acts of June 18, 1910, C. 309, Sec. 1, 36 Stat 539; March 3, 1911, C. 231, Sec. 209, 36 Stat. 1149; October 22, 1913, C. 32, 38 Stat. 219, U. S. C. A., Title 28, Secs. 45 and 45a.

Section 238 of the Judicial Code as amended by the Act of Feb. 13, 1925 (C. 229, § 1, 43 Stat. 938, U. S. C. A., Title 28, Sec. 345, par. 4).

Urgent Deficiencies Act of October 22, 1913 (C. 32, 38 Stat. 219, U. S. C. A., Title 28, Secs. 45 and 47a).

Questions Involved.

The Bureau of Valuation in 1935 directed the Valvoline Oil Company to file its valuations and certain other data with the Interstate Commerce Commission not later than March 7, 1936 (R. 2). The Valvoline Oil Company never having been required to fulfill any other requirements of a common carrier refused on the grounds that its operation was private and that it did not hold itself out to the public as a common carrier. The appellant was not organized to operate a pipe line and only carries its own oil by pipe line as incidental to the operation of its refineries. The Commis-

sion ruled that under the Hepburn Act and its amendments that it was its duty to require the appellant to submit this data for valuation purposes holding that the Valvoline Oil Company was a common carrier within the terms of the act. In passing on this question the Federal Court restricted its opinion to the one question of filing data requested but did not declare the appellant a common carrier for all purposes. The questions before this Court are:

(A) Whether under the fact the Valvoline Oil Company can be held to be a common carrier.

(B) Whether the Valvoline Oil Company can be compelled to file data for valuation of its properties if it is not a common carrier.

(C) Whether the lower court erred in directing compliance with the Interstate Commerce Commission's order for valuation without determining the Valvoline Oil Company's status.

(D) Whether the decree of the lower court is constitutional.

Statement.

This is a direct appeal from the decree of the United States District Court for Western District of Pennsylvania sitting as a specially constituted three judge court dismissing the petition for an injunction and directing the Valvoline Oil Company to comply with the order of the Interstate Commerce Commission for filing data with the Bureau of Valuation of the Interstate Commerce Commission.

The Valvoline Oil Company is one of the oldest refining companies in this country. It owns and operates refineries at Butler, Pennsylvania, and Warren, Pennsylvania, for the manufacture of high grade lubricating oils and other products from selected Pennsylvania crude oil.

Beginning as a partnership in 1868 in Brooklyn (R. 65) to refine crude oil it continued until 1901 when a New Jersey Charter was granted to the company (Exhibit No. 4, R. 82). Gathering pipe lines were laid prior to 1890 (R. 66) and have been extended to various fields of oil development in Pennsylvania. In 1913 (R. 44) the company extended its lines to Cairo, West Virginia, and in 1926 into Ohio. It now operates in these three States, gathering oil for the Butler refinery, the Warren refinery having been shut down since 1932 (R. 47).

The Valvoline Oil Company's operation is unique. It buys the crude direct from the producer and lays its lines to the producers tanks. The day the oil is run from the producers' tanks it is bought by the Valvoline at the price fixed and quoted by the common carrier pipe lines in that district without any charge for pipeage or transportation. The Valvoline produces no oil and has nothing to do with the price regulations on crude oil (R. 45). In order to have lubricating oil of high quality and color to meet the exacting demands of trade, both domestic and foreign (R. 52), the Valvoline early found it necessary to take only selected crude. Laboratory tests are made for color and various ingredients and oils that fail to meet these requirements are refused (R. 51). This practice has continued for many years and is still in vogue. The importance of having light colored amber crude is well known in refinery circles (R. 53).

The Valvoline has never served the public in any way. It transports only its own oil for use in its refinery. It operates over its own private rights of way without the right of eminent domain. It has no tariffs or carrying charges, nor has it ever had any demand made upon it to transport oil for others. The Valvoline Pipe Lines is a department of the Valvoline Oil Company. The company was incorporated in New Jersey to continue the operation

formerly conducted by the partnership. In the charter it is permitted "to engage in any other manufacturing, mining, construction or transportation business" (R. 83). It was never organized as a pipe line company.

The Valvoline lines are practically all two inch and three inch lines not suited for common carrier purposes, nor does it have storage capacity necessary in the transportation business.

The Valvoline has continued in its private capacity to transport its own oil without any supervision by the Interstate Commerce Commission or any State agency. In 1935 the Director of the Bureau of Valuation, in a letter addressed to the Valvoline, directed it to submit certain data and make valuation returns in accordance with Valuation Order No. 26 Revised effective December 31, 1934, the returns to be filed not later than March 7, 1936 (R. 10). The Valvoline refused to comply with the order and filed its petition with the Interstate Commerce Commission denying the right of the Bureau of Valuation to make such demands or that the Valvoline was subject to the provisions of the Act (R. 10).

After a hearing Division I of the Interstate Commerce Commission filed a report February 2, 1937, 47 Val. Rep. 534 (R. 12), holding the Valvoline to be a common carrier subject to the provisions of the Interstate Commerce Act and that it should comply with Valuation Order No. 26. A petition was filed for rehearing (R. 20) based on changed conditions in operations. After further hearing by the entire Commission a report was filed June 6, 1938 (R. 23, 48 Val. Rep. 10), and the Valvoline was again directed to file its data as required by the order. The Valvoline on August 5, 1938, presented a petition to the United States District Court for Western District of Pennsylvania asking for an injunction to restrain the Interstate Commerce Commission from enforcing its Valuation Order. A hearing

was held before a three judge court specially constituted which was by agreement treated as a final hearing. An opinion by Maris, Circuit Judge (R. 112) filed December 3, 1938, restricting the issue to its narrowest terms, held "that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property and requiring it to cooperate by furnishing relevant data. That is the only question involved in the case. The case does not involve and we of course do not decide any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act." Following this opinion an order was filed January 3, 1939, by the court staying compliance with the decree and valuation order pending final determination of the Appeal to the Supreme Court (R. 124). A petition for appeal to the Supreme Court was filed February 20, 1939, and an order made the same day allowing the appeal (R. 126).

Specification of Errors.

The following errors of the District Court are urged herein:

1. In entering the decree dismissing the petition of the plaintiff for a temporary and permanent injunction for want of equity.

2. In holding that the Valvoline Oil Company is a common carrier engaged in interstate transportation of oil by pipe lines within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.

3. In holding that the order of the Interstate Commerce Commission entered June 6, 1938, directing the Valvoline Oil Company to comply with the provisions of the Com-

mission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.

4. In holding that the petition of the Valvoline Oil Company for an injunction enjoining the enforcement of the order should be dismissed.

5. In holding that the Interstate Commerce Commission had any authority or control over the operations of the Valvoline Oil Company.

6. In refusing to find that the Valvoline Oil Company was a purely private corporation not engaged in any interstate commerce in which the public was interested nor was subject to any regulatory provisions of the Interstate Commerce Act.

7. In failing and refusing to give and accord proper legal force and effect to the evidence of record in this case.

Statutes Involved.

This appeal involves an interpretation of the Interstate Commerce Act of February 4, 1887, C. 104 § 1, 24 Stat. 379, as amended by the Hepburn Act of June 29, 1906, C. 3591 § 1, 34 Stat. 584, and Section 400 of the Transportation Act of February 28, 1920, 41 Stat. 474 (49 U. S. C. A. 1).

The pertinent provisions are as follows:

> Sec. 1 (1) That the provisions of this chapter shall apply to common carriers engaged in——
>
> Sec. 1 (1) (B) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;——
>
> Sec. 1 (3) The term "common carrier" as used in this chapter shall include all pipe line companies; telegraph,

telephone and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid or transmission as aforesaid as common carriers for hire——

Sec. 1 (4) It shall be the duty of every common carrier subject to this chapter—to provide and furnish such transportation upon reasonable request therefor and to establish through routes and just and reasonable rates, fares and charges applicable thereto and to provide reasonable facilities for operating through routes——.

Sec. 1 (5) All charges made—shall be just and reasonable—and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Sec. 1 (6) It is made the duty of all common carriers subject to the provisions of this part to establish, observe and enforce just and reasonable classifications of property for transportation—and just and reasonable regulations and practices.——,

Sec. 19a (a) That the Commission shall, as hereinafter provided, investigate, ascertain and report the value of all the property owned or used by every common carrier subject to the provisions of this part——.

Sec. 19a (E) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents, from time to time and as the Commission may require maps, profiles, contracts, reports of engineers and any other documents, records, and papers; or copies of any or all of the same, in and of such investigation and determination of the value of the property of said common carrier.——

Sec. 19a (i) All final valuations by the Commission and the classification thereof shall be published and

shall be *prima facie* evidence of the value of the property in all proceedings under this chapter——.

The above quotations are from the Interstate Commerce Act as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474). The portion of the Hepburn Act of June 29, 1906 (34 Stat. 584), Section One which first included pipe line companies reads as follows:

> "That the provisions of this Act shall apply to any corporations or any person or persons engaged in the transportation of oil or other commodity except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act."

ARGUMENT.

Introductory.

This appeal involves a consideration of the provisions of the Interstate Commerce Act and its amendments dealing particularly with pipe line companies. It brings again before this Court some questions that were considered in the *Pipe Line Cases*, 234 U. S. 548 (reversing in part 204 Fed. Rep. 798), particularly the *Uncle Sam Oil Company* case.

After the decision in the *Pipe Line Cases*, the Interstate Commerce Commission conducted a pipe line investigation and filed a report known as the "Splawn report." House Report No. 2192, 72nd Congress.

This report contains data of its operations furnished by the Valvoline Oil Company but when the order was made requiring certain pipe line companies to file schedules of rates and charges, the Valvoline was not named in the order, although at that time it had extended its lines across the Pennsylvania-West Virginia line (R. 16). It is significant that from that time until the present proceeding no request was made by the Interstate Commerce Com-

mission for data or rates, nor was any effort made to bring the Valvoline under the supervision of the Commission or to show that it was affected by the Hepburn Amendment.

The uncontradicted facts developed in the evidence showing the methods used by the Valvoline in its operation are essential to a proper determination of this case. Summarized they are as follows:

The Valvoline and its predecessors have been refiners of crude oil since 1868. To secure an independent source of supply it has for years gathered oil in pipe lines leading to its refineries. First shipments were made from Pennsylvania about 1890 (R. 66) partly by pipe line and partly by rail to Edgewater, New Jersey. Its lines were extended in 1913 to West Virginia, in 1925 to Ohio (R. 44).

The company selects its grade of crude by laboratory tests (R. 51) and rejects oil offered that does not meet requirements (R. 52) even though it has lines through the leases (R. 46).

The Valvoline lays its lines to the producer's tanks and purchases the oil before it is run into the company's lines. The Valvoline operates only in districts served by large common carriers (Exhibit No. 8) and pays the market price or a premium. There is no written contract to purchase. The producer can change connections from the Valvoline to a common carrier line or vice versa within twenty-four hours. No producer is deprived of an outlet for his product (R. 45).

The Valvoline's lines are laid to transport oil directly to its refineries. It stores no oil except at the refineries and has no storage facilities or tank farms along its lines. It has never run any oil that it did not own. It has never sold any oil run its its lines except a small amount of excess oil occasioned by the temporary shut down of the Warren refinery (R. 42). None of the oil sold is now transported across State lines, though for a short time prior to the first

hearing some oil was gathered in Ohio and sold in West Virginia (R. 20).

The Valvoline gathers its crude oil from about 9020 wells known as "stripper wells" which average 26/100 of a barrel per well per day for a daily run of approximately 2500 barrels. These wells are owned in many small fractional working and royalty interests. The oil carried by the Valvoline is approximately 1% of the total oil run by the common carriers serving the district. The Valvoline operates in a highly competitive field with a constantly diminishing supply of crude oil (R. 48).

The Valvoline has never exercised the right of eminent domain (R. 44). It lays its lines, approximately 1500 miles, on private rights of way (R. 44). It has never transported oil for anyone and no demand or request for transportation service has ever been made upon the company. None of the States in which it operates has undertaken any regulation of its operations or required any permit or franchise (R. 50). No producer is required to sign any agreement or contract for the sale of oil. It is a voluntary arrangement between buyer and seller that can be terminated at any time without notice (R. 45).

If the Valvoline is deemed to be a common carrier it will involve great expense to meet the requirements of the public and the Interstate Commerce Commission (R. 42) and render its own refinery operations much less profitable on account of the various grades and colors of crude oil produced in the different districts. Valvoline's rights to expand, contract and carry on its business as a private refinery enterprise would be impaired and infringed upon if the pipe line department is held to be a common carrier and subjected to all the burdens and restrictions of common carrier operations.

The District Court held that the Valvoline was subject to the provisions of the Act only insofar as it was required

to comply with Section 19a of Valuation Order No. 26 and that the Act was constitutional as applied to the Valvoline's operations. We contend—

I. That:

(A) The Valvoline is and always has been a purely private enterprise;

(B) That the pipe lines are merely a department or arm in the refining business;

(C) That no "public interest" is involved in the operation;

(D) That the oil transported is not "in commerce" or subject to regulations;

(E) That valuation of properties is the basis for rate making and further regulations;

(F) That the valuation provisions of the Interstate Commerce Act are not severable.

II. That:

(A) The Act as applied to the Valvoline is in violation of the Due Process Clause of the 5th Amendment;

(B) That the change of status is confiscatory;

(C) That its status cannot be changed by legislative fiat.

ARGUMENT.

I.

Can the Valvoline Oil Company be Classified as a Common Carrier Within the Term, Subject to the Provisions of the Interstate Commerce Act?

This question we contend must be answered in the negative when the uncontradicted facts concerning the operations, as shown in the testimony, are fully considered.

(a) "Common Carrier" as Defined by the Amendments to the Act.

The Hepburn amendment of June 29, 1906 (34 Stat. 584), to the Interstate Commerce Act, the first to include pipe line companies, reads as follows:

> Section 1. "That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity except natural or artificial gas by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe line and partly by water who shall be considered and held to be common carriers within the meaning and purpose of this act."

The definition of the term "common carrier" in the 1906 Act appears in section one as follows:

> "The term 'common carrier' as used in this act shall include express companies and sleeping car companies. The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad whether owned or operated under a contract agreement or lease and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said property; and the term transportation shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing storage and handling of property transported; and it shall be the duty of

every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto."

No other definition of a common carrier is given in the Act of 1906. The Commerce Court Act, Section 7 (36 Stat. 544), carries the same definition.

Then came the Transportation Act of 1920 which contained a new definition. Section 1 (3) "The term 'common carrier' as used in this chapter shall include all pipe line companies; telegraph, telephone and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, *engaged in such transportation or transmission as aforesaid as common carriers for hire.* (Italics are added.) Wherever the word 'carrier' is used in this chapter it shall be held to mean 'common carrier'."

The Congressional Record shows no reference in the debates on the Act to the amendment to this definition, nor is any explanation given for the addition of the words "as common carriers for hire."

The explanation comes from the fact that between the Act of 1906 and the Act of 1920 the Supreme Court had occasion to construe the pipe line amendment in the *Pipe Line Cases*, 234 U. S. 548, 34 S. Ct. 956, 58 L. Ed. 1459, affirming 204 Fed. Rep. 798 in part and reversing in part. In those cases, particularly the *Uncle Sam Oil Company* case, the court held that the mere fact that a company carried oil across State lines by pipe line did not make it a common carrier. The Uncle Sam Oil Company owned and operated a refinery in Kansas. It also owned and operated certain wells in Oklahoma and transported oil by pipe line across the State line to its refinery. Whether the Uncle Sam Oil Company transported only oil it produced or whether

it also purchased oil is not clear. In 204 Fed. Rep. 798-802 we read: "The extent to which this company purchases oil from other producers, if it engages in that business at all does not appear from the record."

The ownership of the oil was not the determining factor for the large carriers all claimed ownership as well. The court held that the Uncle Sam operation was for a definite use in its own refinery, "the transportation being merely an incident to use at the end." Thus the first time the court construes the pipe line Amendment it holds that a company can transport oil by pipe line across State lines and not become a common carrier within the provisions of the Act.

The Valvoline operation differs in one respect—it produces no oil from its own wells. It purchases its oil from various producers but the transportation is nonetheless incidental to its use in its refineries. Thus is a *bona fide* use established by many years of operation and the ownership is not a mere subterfuge as was found in the other carriers in the *Pipe Line Cases.*

After this decision came the new definition with the qualifying phrase "engaged in such transportation or transmission as aforesaid as common carriers for hire." The words "as aforesaid" refer to the various methods of transportation including pipe lines. The whole history of the pipe line legislation shows that it was to strike at a private monopoly among companies whose primary function was the public transportation by pipe line for profit. The 1920 amendment clarified the definition by excluding private *bona fide* operations that served no public interest. The Valvoline's operations clearly exclude it from the provisions of the act as thus defined.

This line of reasoning was followed in *Tidewater Pipe Line Co.* v. *Crawford Co.*, 143 N. E. 87, 311 Illinois 375 (1924), in which the *Uncle Sam Oil Company* case was cited

with approval. The Tidewater Company sought to be relieved of local taxation on oil in tanks. This oil was purchased in Crawford County, Illinois, and gathered for shipment to the company's plant in Bayonne, New Jersey. The court made no distinction between oil purchased from producers and oil produced from the company's wells and held that the company in this operation was not a common carrier.

In a Montana case, *Railroad Commissioners* v. *Montana Grant Petroleum Co.*, Docket No. 929, Report and Order No. 1435, Dec. 1, 1925, P. U. R. Digest Vol. 3, sec. 105, page 2727, it was held that a corporation producing a small amount of oil and purchasing larger amounts on term contracts does not by transporting such oil through a pipe line to its refinery act as a common carrier if it does not transport oil for hire and has no monopoly of the field.

(b) Transportation by Pipe Line Merely an Incident to Operation of Valvoline Refineries.

The Valvoline early in its history determined that an independent supply of selected crude oil was necessary for successful and profitable operation of its refineries. It therefore undertook the construction of gathering lines, as distinguished from larger trunk lines, for transportation first in Pennsylvania, later in West Virginia and Ohio. These extensions were necessary to secure oil in a diminishing field. Through all the years the Valvoline maintained a strictly private status. It had no right of eminent domain and assumed none. Its lines were laid direct from the producers to its own refineries and were constructed with no thought of carrying oil for any other person. It has neither lines nor storage adequate to handle or deliver oil for other producers and to make such changes would involve enormous expense. There are large common carriers owning refineries to which they deliver their own oil, but it must be borne in mind that they are primarily carriers and the

refineries are an adjunct to their transportation systems. The acid test of a company's status is its method of conducting its business over a period of years. The Valvoline's operations meet this test.

Rampone v. *Leonardini* (1936), 1936 Annual P. U. R. 254, 39 Calif., R. C. R. 588;

Public Service Commission v. *Grunshaw*, 49 Wyo. 158, 53 P. (2nd) 1, 109 A. L. R. 534;

James v. *Public Service Commission* (1935), 9 P. U. R. (N. S.) 398, 116 Pa. S. C. 577, 177 Atl. 343;

Brink's Express v. *Public Service Commission*, 117 Pa. S. C. 268, 178 Atl. 346.

(c) Is There Any "Public Interest" Involved in Valvoline's Operations?

The Commission in its report (R. 18) states, "We find that there is a public interest served in the movement of the commodity carried by it."

Practically every private business serves some public interest but this term "public interest" as used in the Commission's report must be limited to the meaning given it in judicial decisions. This term is used almost exclusively in the classification of business known as public utilities. "It means that a business or property in order to be affected with a public interest must be such or be so employed as to justify the conclusion that it has been devoted to a public use and its use thereby in effect granted to the public." *Williams* v. *Standard Oil Co.*, 278 U. S. 235-239-240, 49 S. Ct. 115.

In *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 43 S. Ct. 630, Chief Justice Taft speaking for the court subdivides business clothed with a public interest justifying public regulation into three classes; "(1) Those carried on under the authority of a public grant or privileges expressly or impliedly imposing an affirmative duty of ren-

dering public service demanded by the public such as common carriers and public utilities. (2) Occupations regarded as exceptional, the public interest attaching to which has been recognized from earliest times and has survived the period of arbitrary laws by Parliament or colonial legislatures for regulating trades and callings. In this class are inns, cabs and grist mills. (3) Businesses which, though not public at their inception, have become such by devoting their business to a public use, thereby granting the public an interest in that use and subjecting themselves to public regulations to the extent of that interest, although the property continues to belong to its private owner and to be entitled to protection accordingly."

The reasoning by the Commission is largely based on the fact that the Valvoline gathers oil from 9020 (Exhibit # 10, R. 92) stripper wells scattered over Western Pennsylvania, West Virginia and a small part of Ohio, owned by less than 500 producers or groups (R. 25). That these wells are so small that common carriers cannot afford to construct, maintain and operate lines for transportation of oil in such small quantities. Thus instead of benefitting the producers by having the Valvoline declared a common carrier it would have the opposite effect and tend to destroy the outlet for their oil if the Valvoline had to operate under common carrier regulations. Far from being a monopoly compelling producers to sell their oil, the Valvoline, not fettered by the burdens of common carrier regulations, is able by economical operation to furnish them access to market at prices at least equal to the prices posted by common carriers. Even these operations are in some instances not profitable (R. 64).

The record is void of any fact or circumstance that would indicate public interest in the Valvoline's operation. General welfare does not furnish a sufficient basis for every regulation to which a business might be subjected; nor does the fact that the operation is large and covers considerable terri-

tory give it any element of public interest. *Tyson Bros.* v. *Banton*, 273 U. S. 418-430.

In the territory served by the Valvoline (Exhibit # 15, Map) the six common carriers transported 79,512.084 barrels of crude and in the same year the Valvoline ran 890,885 barrels. Where a company transports only a relatively small part of the total production of the field and carries on its business in a private manner it is not a common carrier. *Associated Pipe Lines* v. *Railroad Commission of California*, L. R. A. (N. S.) 1918 C. 849, 169 Pa. 62.

American Jurisprudence Vol. 9, pp. 430-431, cited with approval in 112 A. L. R. 86-90 annotation, states: "The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently and hence he is regarded, in some respects, as a public servant. The dominant and controlling factor in determining the status of one as a common carrier is his public profession or holding out by words or by a course of conduct as to the service offered or performed."

> "The important thing in determining if a corporation is a public utility is what it does, not what its charter says."
>
> *Valcour* v. *Morrisville* (Vermont) 27 (New Series) P. U. R. 34-39, 184 Atl. 881.

It was held in *Producers Pipe Line Co.* v. *Martin*, 22 Fed. Sup. 44 (Kentucky), that the public has no right to the use of a pipe line and the owner cannot be compelled to allow any person producing oil to use it where it acquired none of its rights by condemnation, does not hold itself out as a common carrier and uses it only to transport its own oil acquired from many producers.

> "We understand 'public interest' to mean more than mere curiosity. It means something in which the public, the community at large, has some pecuniary interest

or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as the interests of the particular localities which may be affected by the matters in question."

State v. *Lyons*, 165 P. 419, 63 Okla. 285; also *State* v. *Crochett*, 206 P. 816, 86 Okla. 124, *New State Ice Co.* v. *Liebmann*, 52 F. (2nd) 349, *Standard Oil* v. *Hall*, 24 F. (2nd) 455, *Overbrook* v. *Public Service Commission*, 100 Pa. S. C. 217.

In a recent case decided by the Superior Court of Pennsylvania, *Weisberger* v. *Pennsylvania Public Utility Commission*, reported in advance sheet 7 A. (2nd) 731, Weisberger operated a dairy and hauled milk purchased from various producers to his dairy and charged the cost of transportation against the price paid for the milk. It was held that the purchaser was his own carrier, the transportation being necessary for the conduct of his own dairy business and was not a common or contract carrier under the statute, citing the *Uncle Sam Oil Company* case as well as *Frost* v. *R. R. Commission*, 271 U. S. 583 and others.

(d) The Oil Transported by the Valvoline is Not "In Commerce."

The Valvoline requires selected crude for its refinery graded according to color and refining qualities (R. 52). This oil is bought direct from the producer and flows from his tanks to the Valvoline's lines. It is not mixed or commingled with any other oil. Only one grade of oil is transported through these lines. All lines are laid from the producing fields to the refineries. No oil is stored except at the plant which is limited to a ten-day supply. Constant pumping of crude through the lines is essential to the operation of the refinery. This transportation becomes a vital part of the refinery operation. Crude oil is the raw product which is carried to the refinery for manufacture into lubricating

oils, petrolatum and other products. This oil is not "in commerce" until the refining is complete and the products ready for market.

In *Pennsylvania R. R. v. Public Utilities Commission of Ohio*, 298 U. S. 170, 56 S. Ct. 687, the Pittsburgh Coal Company transported coal in its own barges down the river and then carried it by rail over private tracks from Pennsylvania to Ohio to its plant to be washed and graded for market, "making use of its own facilities, its trains and tugs and barges." This Court sustained the Coal Company's contention that the coal transported by rail across State lines was not "in commerce" until it left the plant where it is prepared for market and was therefore not subject to the regulations of Interstate Commerce. The late Justice Cardozo, speaking for the court, said:

> "Not all commerce is transportation and not all transportation is by common carrier by rail. The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between the States. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a Federal Trade Commission. The Interstate Commerce Act (49 U. S. C. A. # 1 *et seq.*) is aimed at common carriers exclusively #1 (1) (3) and not even at all these."
>
> In determining the application of the Act, "transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier—And wherever the word carrier is used in this chapter it shall be held to mean 'common carrier' —. *The transportation between Pennsylvania and Ohio was by the owner who was not a common carrier but furnished implements of carriage for its own use exclusively.*" (Italics are added.)
>
> Also *Pennsylvania R. R.* v. *Pitts. Lisbon & W. Ry. Co.*, 83 F. (2d) 861-865.

In *Campbell River Mills* v. *Chicago M. & St. P. Ry. Co.*, 53 F. (2d) 69, 52 S. Ct. 310, affirming 42 F. (2d) 775, 285 U. S. 536, 76 L. Ed. 930, logs were hauled over a private logging railroad from British Columbia across the border to U. S. and delivered to defendant railroad for shipment. The logs were not "in commerce" until committd to the railroad for shipment. Commerce is a practical legal conception drawn from the course of business, *Savage* v. *Jones*, 225 U. S. 501, 32 S. Ct. 715, 56 Fed. 1182. There is a difference between interstate commerce and interstate transportation. One is governed by the nature of the business; the other by the nature of the particular transportation. "Commerce" is within inhibitions of the Sherman Act, 15 U. S. C. A. § 1-7, 15, but "transportation" may have no relation to interstate rates on shipment of the same goods within the same State. *Atlantic Coast Line Ry.* v. *Standard Oil Co.*, 12 F. (2d) 541-547, *Youngstown & S. R. R. Co.* v. *Penna. R. R. Co.*, 1935 P. U. R. 64, 7 P. U. C. 530-537.

It is true that the Valvoline sells a very small amount of its oil in crude state. Due to economic conditions the Warren refinery has been shut down since 1932. From 1934 to 1937 a small amount of crude, 3.78% of the total monthly run, was transported from Ohio to West Virginia. A small part of this oil was sold to the refinery at St. Marys, West Virginia (R. 54). This arrangement was a temporary one to dispose of excess crude. None of the crude oil sold has crossed state lines since 1937 (R. 54). It was sold to two small refineries close to the Valvoline lines as an accommodation to the Valvoline and at its request (R. 64). The amount of excess oil is diminishing and will soon adjust itself. This sale of excess oil as a temporary measure does not change the status of the company, *Valcour* v. *Morrisville, supra.*

(e) Purpose of Requirement Under the Act for Valuation of Properties.

Under Sec. 19a (a) of the Act the Commission was directed to value the properties belonging to or used by common carriers. The purpose of this provision for valuation is to have adequate data to determine the justness of the rates charged by the carriers. The order for Valuation No. 26 served on the Valvoline is the first step in compelling it as a common carrier to submit data, establish traffics and rates, and in general to comply with all regulations affecting common carriers. It was argued by government counsel that this Valuation Order was no hardship on the Valvoline and could be easily complied with. In the first place, it would be very difficult for the Valvoline to furnish the necessary data. Its lines were laid over a period of fifty years without any definite plan in mind (R. 69). No adequate records were kept of location of lines, rights of way and other data (R. 70), and it would require a large amount of work to satisfy the Interstate Commerce Commission.

In the second place it definitely fixes the status of the Valvoline as a common carrier, for the primary use of valuations under the Act is for rate making purposes.

N. Y., N. H. & H. R. Co. v. *I. C. C.*, 55 F. (2d) 1028-1034, 287 U. S. 178-200, 53 S. Ct. 106, 77 L. Ed. 248; and the Act makes the valuation mandatory for all common carriers with a few minor exceptions that have no application here.

(f) Valuation—The Provisions of the Act are not Severable.

This case was submitted to the District Court on the record before the Interstate Commerce Commission. No additional testimony was taken. The Valvoline questioned the authority of the Interstate Commerce Commission to compel it to comply with Valuation Order No. 26. In de-

ciding this case the District Court undertook to sever the provisions of the Act and restrict the decision to compliance with the Valuation Order. The Court said: "We therefore decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property and requiring it to cooperate by furnishing relevant data. That is the only question involved in the case. The case does not involve, and we of course do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act" (R. 119). The court must have given heed to this statement in the brief of defendant, "The Commission's order under attack requires nothing more of the petitioner than the furnishing of certain information." These honeyed words are only sugar coating for the bitter pill. The decision requiring data for valuation is based on the finding of the Commission that the Valvoline is a common carrier. The District Court now limits its decision thus (R. 119-120):

> "The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act *to the extent* that it is subject to the provisions of Section 19a of the Act." (Italics are added.)

Does the court undertake to create a new class of common carriers subject only to certain provisions of the act or does this statement show that the District Court could not go the whole way and declare the Valvoline a common carrier in all respects? The Valvoline has no reason to refuse to supply any information it has or that it can reasonably secure for the Commission, nor does it complain of the order to avoid taxation because it now pays the tax levied on oil transported by pipe line (R. 50). The Valvoline's complaint is that classed as a common carrier it is

forced to supply this data and that it will be subject to all other regulations of the Commission applicable to common carriers in general. The three judge court with its own knowledge of the oil business and its operations in the Pennsylvania field refused to say that the Valvoline was a common carrier for all purposes under the Act. We contend the court fell in error in trying to sever the provisions of the Act. If the facts developed in the testimony do not warrant the finding that the Valvoline is a common carrier for all purposes, then it was the court's duty to restrain the Interstate Commerce Commission from issuing any order based on such a finding.

The Interstate Commerce Commission seemed also to entertain some doubt as to the application of this Act to the Valvoline. After concluding that the Act intended to convert all interstate pipe lines to common carriers without regard to their previous status the report says (R. 15):

> "Whether Congress could lawfully so act is not for us to decide. The Interstate Commerce Commission is an administrative body which may not presume to annul by interpretation an act of the federal legislature. As the result of our investigation certain pipe line companies, parties to the proceeding, were ordered to file schedules of rates and charges for the interstate transportation of oil in compliance with the provisions of the Act. *The Valvoline was not named in our order although its lines at that time extended across the Pennsylvania West Virginia State line.*" (Italics are added.)

The investigation referred to was summarized in a "Report on Pipe Lines," House Report No. 2192, 72nd Congress, prepared by Mr. Walter M. W. Splawn.

The failure to include the Valvoline in the list of common carriers is strong indication that at that time the Interstate Commerce Commission concluded, after investigation, that the Valvoline was not a common carrier. There are no

facts or circumstances regarding the company's operations in the intervening years to change the situation. It is interesting to note that during the hearing before the Interstate Commerce Commission Mr. Eastman asked counsel for the Commission what benefit was to be had from the valuation of the Valvoline as it was now paying the pipe line tax. Counsel responded that there was no apparent benefit to be derived but that the act was mandatory. Why, then, should we strain the construction of the act to bring the Valvoline within its provisions without benefit to the public and to the great detriment of the company, forcing it into the common carrier class.

II.

Are These Provisions of the Interstate Commerce Act as Applied to the Valvoline in Violation of the Constitution?

(a) Interstate Operations of Valvoline Before Hepburn Amendment.

Stress has been laid on the fact that Valvoline did not lay any pipe lines across state lines until 1913 (R. 44). This is true but it is also true that Valvoline has been engaged in interstate transportation for over fifty years. These shipments came under the classification in the amendment of shipments "partly by pipe line and partly by rail." The Valvoline's first pipe lines were laid near Warren, Pennsylvania, about 1890 or before (R. 66). A large part of this oil was piped to a loading rack at Tiona, Pennsylvania, and shipped from there by rail to the company's refinery at Edgewater, New Jersey (R. 66). This method of interstate shipments was well established and in operation long before the Hepburn amendment of 1906.

(b) Confiscation of Property by Change of Status.

To change the private status of the Valvoline to that of a common carrier under the Act will involve expenses of operation and equipment estimated from $200,000 to $300,000 (R. 42). This does not include the additional cost of any increase in lines or storage if other oils not up to Valvoline specifications, known as "pipe line crude" are carried for the public (R. 43). To meet the demands of a public carrier requires a complete change not only in the equipment for pumping oil through the lines but also the erection of storage tanks and a rearrangement of the method of handling crude at the refineries. Thus the conversion of a private operation to public use becomes a taking without "Due Process." *Adair* v. *U. S.*, 208 U. S. 161.

The recent proposed legislation for the divorcement of pipe lines from refineries (Senate Bill No. 2009 on which the Senate Interstate Commerce Committee held hearings, and the Borah Gillette Bill S. 2181 introduced April 17, 1939) serves as an illustration of what may be expected if the Valvoline is held to be a common carrier. A separation of the Valvoline's pipe lines from the refinery operation would render the pipe lines unprofitable and practically valueless. Like the Hepburn amendment aimed at monopolistic operations of the large carriers, this new legislation is aimed to cure some similar evils. The Valvoline's operation is so small it is almost negligible. It has no means or method to compel any producer to deal with it. Any reason for divorcement of large carriers and refineries is entirely lacking in the Valvoline operation, yet such legislation might apply to it if the Valvoline is determined to be a common carrier for all purposes.

(c) The Status of the Valvoline Cannot be Made by Legislative Fiat.

We have undertaken to show that the Valvoline's operation was interstate before the Hepburn amendment of 1906. Thus a purely private interstate pipe line operation would by legislative fiat be stripped of its private character and declared to be a common carrier. With the resultant expense to operate as a common carrier and the damage sustained it becomes an appropriation of private property without compensation and without due process of law.

In the *Pipe Line Cases, supra*, Chief Justice White in a concurring opinion stated that there was no power under the Constitution without the exercise of the right of eminent domain to convert a private business into a public one without the company's consent.

In *Producers Transport Co.* v. *R. R. Commission of California*, 251 U. S. 228, affirming 176 Calif. 499, Mr. Justice Van Devanter said:

> "It is of course true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts and never was devoted by its owner to public use, that is to carrying for the public, the state could not, by mere legislative fiat or by any regulating order of a commission convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation which no state can do consistently with the 'due process of law clause' of the 14th Amendment."

In another California case, *Associated Pipe Line Co.* v. *Railroad Commission*, L. R. A., U. S. 1918C 849, 169 Pac. 62, the statute was held in violation of the due process clause of the 14th Amendment where it undertook to convert a private pipe line into a common carrier. The company in-

question had never exercised the right of eminent domain nor transported oil for hire. It was held that the use by the owner determined its status and that to declare such a company a common carrier was to deprive it of its rights and to dedicate it to public use without due compensation.

A private carrier cannot by mere legislative command be converted against its will into a common carrier. *Frost* v. *R. R. Commission*, 47 A. L. R. 457, 271 U. S. 583, 70 L. Ed. 1101, 46 S. Ct. 605; *Dairymen's Cooperative Assn.* v. *Public Service Co.*, 115 Pa. S. C. 100-112, 318 Pa. 381, 177 Atl. 770; *State Ex. Rel. Fulton* v. *Ives*, 123 Florida 401, 167 Southern 394.

In *Smithennan & McDonald Inc.* v. *Mansfield Hardwood Lumber Co.*, 6 F. (2d) 29, construing an Arkansas statute the court said:

> "The latter (the statute) of course is limited to common carriers and does not extend to transportation for the sole purpose of conducting material to and from its own mill."

Here we have a company that embarked long ago in a purely private business and has never changed its policy. Its investments were made long before pipe lines became the subject of interstate commerce regulation. As proof that the Valvoline does not deny the governments exercise of lawful authority over pipe lines it should be noted that the Valvoline pays a tax (R. 50) imposed upon "all transportation of crude petroleum and liquid products thereof by pipe line". Revenue Act of 1932, Sec. 731(a), 47 Stat. 275, and the prior Revenue Act of 1918, Sec. 50(d), 40 Stat. 1103, upon all transportation of oil by pipe line.

The Act further provides (A-2)—"In case no charge for transportation is made either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such trans-

portation, to be paid by the person furnishing the transportation;" (B-2). "If no such rates or tariffs exist then at the basis of actual *bona fide* rates or tariffs of other pipe lines for like service". These sweeping provisions affect private carriers and common carriers alike.

Conclusion.

The issue here is clearly defined. The order of the Commission and its authority to make the order are based upon the finding that the Valvoline is a common carrier. While such a finding presumably might not at present interfere with the company's operation it cannot be predicted, as shown by the pending legislation on divorcement of pipe lines, in what manner or how seriously the Valvoline may be involved. The Valvoline's operation has not in all the years of operation transgressed any rights of others nor has there ever been any complaint about its operations. These facts only sustain our contention that its purchase and piping of oil is a private transaction between buyer and seller in which the public has no interest.

We, therefore, respectfully submit that this finding of the Commission and the District Court should be set aside and a permanent injunction granted.

HARRY S. ELKINS,
J. CAMPBELL BRANDON,
Attorneys for Valvoline Oil Company, Appellant.

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No. 25

In the Supreme Court of the United States

OCTOBER TERM, 1939

VALVOLINE OIL COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINION BELOW

The opinion of the specially constituted District Court (R. 112–120) is reported in 25 F. Supp. 460. The reports of the Interstate Commerce Commission, upon which the challenged order is based (R. 12–19, 23–31), are published in 47 Val. Rep. 534 and 48 Val. Rep. 10.

JURISDICTION

The final decree of the District Court was entered December 29, 1938 (R. 120). Petition for appeal was filed February 20, 1939 (R. 126), and was

allowed the same day (R. 126–127). Jurisdiction of this Court is invoked under the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210–219, U. S. C., Title 28, Secs. 47 and 47 (a)), and under Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, U. S. C., Title 28, Sec. 345). This Court noted probable jurisdiction on April 17, 1939.

QUESTIONS PRESENTED

1. Is appellant subject to the Interstate Commerce Act under the provisions of Section 1 (1) (b) and 1 (3)?

2. If appellant is subject to the Act, are its constitutional rights invaded by an order of the Interstate Commerce Commission, issued under Section 19a (e), requiring it to furnish certain information?

3. May appellant question the validity of provisions of the Act other than Section 19a (e); and if so, are they constitutional as applied to it?

STATUTES INVOLVED

The provisions of the Interstate Commerce Act (February 4, 1887, c. 104, 24 Stat. 379, as amended; U. S. C., Title 49) primarily involved are found in Sections 1 (1), 1 (1) b, 1 (3), 19a (a) and 19a (e), which provide in part as follows:

> SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * *

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *.

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire.

* * * * *

SEC. 19a. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part * * *

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier * * *.

Other pertinent provisions of the Interstate Commerce Act are set out in Appendix A, *infra*, pp. 48–52.

STATEMENT

1. The Proceedings.—This is an appeal from the final decree of a three-judge district court for the

Western District of Pennsylvania, convened under the Urgent Deficiencies Act (c. 32, 38 Stat. 210–219, U.S.C., Title 28, Secs. 47, 47 (a)), dismissing for want of equity a petition to enjoin and annul an order of the Interstate Commerce Commission entered June 6, 1938. The order required appellant, hereinafter referred to as "Valvoline," to file with the Commission within a specified time certain maps, charts, and schedules required for the valuation of its pipe-line property under Section 19a of the Interstate Commerce Act.

The order was issued under the following circumstances:

Pursuant to its statutory duty "to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions" of the Interstate Commerce Act,[1] the Commission had, on December 31, 1934, issued "Valuation Order No. 26—Revised" (R. 9–10), requiring all pipe-line companies subject to the Act to prepare and file with the Commission maps, charts, and schedules of their properties not less than sixty days after receiving written notice from the Director of the Commission's Bureau of Valuation. Served with this notice in January 1936, Valvoline asserted that it was not subject to the Act and petitioned the Commission to determine

[1] Section 19a of the Interstate Commerce Act, *infra*, p. 50.

its status (R. 1). The Commission granted the petition and, after full hearing before Division 1, issued a report dated February 2, 1937 (R. 12–19), holding that Valvoline is "engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act," and "should, therefore, comply with our Valuation Order No. 26 and furnish promptly the information called for therein" (R. 19).

Evidence at this hearing disclosed that Valvoline was transporting crude oil in interstate commerce both for the use of its own refinery and for sale to an independent refining company in West Virginia (R. 42, 43). Shortly after the date of the Commission's report, Valvoline, admittedly in order to avoid being held to be a common carrier (R. 54), mechanically rerouted the oil transported to the West Virginia refinery (R. 62) so that this refinery was thereafter furnished only with oil produced in West Virginia and not moved across state lines.

Thereupon Valvoline petitioned for a rehearing alleging that this change in its operation was material to the determination of its status (R. 20). The petition was granted and a hearing was held before the full Commission. On June 6, 1938, the Commission rendered its report (R. 23–31) holding that the change in operation did not affect its prior de-

termination, and directing Valvoline to comply with "Valuation Order No. 26—Revised" within ninety days (R. 31).

Valvoline thereupon instituted this suit, seeking both an interlocutory and a permanent injunction against enforcement of the order (R. 1–8). The Commission intervened and filed an answer (R. 36, 37). By agreement of counsel and with the court's consent, a single hearing was held on the prayer for both a temporary and a permanent injunction. Valvoline introduced in evidence a certified transcript of the testimony and exhibits introduced at both hearings before the Commission. No other evidence was offered. On December 6, 1938, the court below filed its opinion, findings of fact, and conclusions of law (R. 112–120), holding that Valvoline is subject to the Interstate Commerce Act and that it is required to comply with the Commission's order. The final decree dismissing the petition was entered on December 29, 1938 (R. 120). On January 3, 1939, the court below stayed enforcement of the Commission's order pending decision by this Court (R. 124–125).

2. The Evidence.—The material facts, which are not in dispute, are as follows:

Valvoline's business originated in a partnership formed more than seventy years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pennsylvania, through which oil was gathered for ship-

ment in tank cars to the company's refinery at Edgewater, New Jersey. Later a refinery was built at Warren, and some of the oil was refined there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, manufacture, and marketing of petroleum oil and its products, and to engage in "any transportation business of any kind or character whatsoever," without, however, the right of eminent domain in New Jersey. At the time of its incorporation Valvoline was refining about 22,000 barrels of oil per month (R. 89, 113).

As the demand for lubricating oil grew, the pipeline system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pennsylvania. The movement of oil in that year amounted to about 55,000 barrels per month (R. 90, 113).

Up to that time all of the oil transported by Valvoline by pipe line moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio boundary was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, West Virginia, was purchased and lines were laid in southeastern Ohio (R. 113).

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At the present time Valvoline operates a connected system of pipe lines in Pennsylvania, Ohio, and West Virginia of a total length of 1,426 miles, comprising 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe (Exhibit 15). Through these lines it transports approximately 75,000 barrels of oil per month (R. 65), of which approximately 50% moves across state lines. About 50% of the oil transported originates in Pennsylvania, 38% in West Virginia, and 12% in Ohio (R. 48, 113).

Several other oil pipe lines, both common carrier and private, extend through, or in close proximity to, the fields served by Valvoline. The common carriers have trunk lines of from 3 to 12 inches in diameter and carry a much larger volume of oil than is transported by Valvoline. None of them, however, serves the wells from which Valvoline receives its oil (R. 45, 113–114).

Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil which it uses directly from producers in the field and to carry in its pipe lines only oil of which it is the owner (R. 48, 114).

For its manufacturing purposes Valvoline prefers a select grade of oil of a light amber color. Some of the oils produced along its pipe lines are not satisfactory because they are too dark or contain undesirable ingredients difficult to eliminate in the refining process. It refuses to buy or admit into its lines oils that do not meet its specifications

and the producers of such oil must, therefore, find an outlet through other pipe lines and sales to other refineries. Several instances of rejections of oil by Valvoline are mentioned in the record (R. 43, 46). However, any producer within reasonable distance of Valvoline's lines, having oil of the desired quality and not already receiving pipe-line service, is afforded a market for its oil through sale to Valvoline. One officer of the company testified (R. 43): "We have never rejected a well producing the kind of oil we need," and another stated (R. 47): "Once we have connected with a well which produces oil of the quality we desire, we handle all of the oil produced if he wants to give it to us." Valvoline pays the posted market price for the oil it purchases, except that producers whose wells are located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny County line, receive a premium of 5 cents per barrel over this posted price (R. 45, 114).

In November 1937 Valvoline's pipe lines were serving exclusively 9,020 wells. These were mostly so-called stripper wells of small output, the average daily run for all of the wells being less than half a barrel per day per well. In the purchase of the output of these wells, Valvoline has dealings with and accounts to 2,014 royalty owners and 1,751 lease operators. These owners and operators have no other present outlet for their oil. In the event Valvoline should refuse to accept it they could re-

ceive service from one of the other pipe-line companies but only if they were able to tender at least 5 barrels per day per mile of pipe-line extension necessary to make the connection. Since the average run of oil from the wells is much less than this amount, this requirement would deprive many of the producers of a pipe-line outlet and a market for their oil, should Valvoline refuse to carry it (R. 58, 114–115).

In 1932 economic conditions brought about a curtailment of operations, and the refinery at Warren was closed. Valvoline, instead of limiting its purchases to the quantity of oil that could be refined at East Butler, continued as before to purchase all oil of suitable grade offered in order not to lose the good will of the producers (R. 47). The result was that it received, and has continued to receive, an excess of oil over its ability to refine. Having no use for this oil in its own operations, it entered into arrangements with the Pennsylvania Refining Company at Karns City, Pennsylvania, and with the Ohio Valley Refining Company at St. Marys, West Virginia, under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania, and its movement through Valvoline's lines is intrastate. At the time of the first hearing before the Interstate Commerce Commission some of the oil sold to the Ohio Valley Refining Company origi-

nated in Ohio and moved across the Ohio-West Virginia State line. After that hearing, admittedly in order "to avoid any question of our status being held as a common carrier" (R. 54), Valvoline altered its operations so that oil delivered to this refinery consists exclusively of oil originating in West Virginia.[2] In the case of both refineries the oil is sold at delivered prices, which include amounts to cover the cost of transportation (R. 51, 115).

Valvoline has never exercised the right of eminent domain. Its pipe lines have been laid over privately acquired easements and rights-of-way (R. 44). The arrangements under which it has laid its lines across public highways, rivers, and lines of other carriers do not appear of record.

Valvoline has never filed tariffs or reports with the Interstate Commerce Commission or with any other regulatory body (R. 50).

SUMMARY OF ARGUMENT

In three recent decisions this Court has held that the expense of furnishing information of the type required of appellant by the Commission's order

[2] This change was effected by a simple mechanical process. The oil from Ohio is periodically held up in a tank at Bens Run, West Virginia, until oil for the West Virginia refinery can be pumped in the opposite direction from the West Virginia lines. When delivery is completed, the Ohio oil is released, mingled with West Virginia oil, and later with Pennsylvania oil, and transported to the Valvoline refinery at East Butler (R. 62).

does not constitute such substantial and irreparable injury as to justify equitable relief. *Petroleum Exploration, Inc.* v. *Public Service Commission,* 304 U. S. 209; *California* v. *Latimer,* 305 U. S. 255; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41. Since this expense is the only injury of which appellant may complain, its suit should be dismissed if it is governed by the ordinary principles of equitable jurisdiction. This Court has never decided, however, whether those principles apply to a suit which is brought under the Urgent Deficiencies Act to review an order of the Interstate Commerce Commission. It appears to have been general practice for a number of years to assume that the courts have jurisdiction over such a suit if only the order involved is final and the petitioner has a legal right or interest injuriously affected thereby. In view of this circumstance and because, in the opinion of the Interstate Commerce Commission, administrative convenience will be served by review of the particular order here involved, the Government does not insist upon this preliminary jurisdictional question but seeks a decision on the merits.

I

That appellant is subject to the Interstate Commerce Act under the provisions of Sections 1 (1) (b) and 1 (3) is clear both from the language of the Act and from the decision of this Court in *The Pipe Line Cases,* 234 U. S. 548. The Act applies to

"common carriers engaged in * * * transportation of oil * * * by pipe line" between the states, and "common carrier" is defined as including "all pipe-line companies." Since Valvoline is a pipe-line company engaged in the interstate transportation of oil, it comes directly within the statutory definition. Valvoline's contention that the Act applies only to those already engaged in pipe-line transportation as common carriers finds no support in the language of the statute and is precisely the argument which this Court rejected in *The Pipe Line Cases*, 234 U. S. 548. While the applicable sections of the Act have been amended in minor details since that decision, the amendment simply clarifies the language of the statute and does not make any important change in policy. Indeed, the Act as amended even more clearly applies to appellant than it did prior to its revision.

The further contention that *The Pipe Line Cases* are not decisive because appellant's operations differ from those of the companies there involved cannot be maintained. That decision was premised upon the principle that the provisions of the Act "apply to any person engaged in the transportation of oil by pipe line." Moreover, the Court there sustained the Act in its application to Tidewater Pipe Company, Ltd., whose operations were essentially the same as those of Valvoline.

Any lingering doubt that appellant is subject to the Act is dispelled by the legislative history of the

statute which conclusively shows that the very two factors upon which Valvoline principally relies to exempt its operations from the Act—its common ownership and control of refinery and pipe line and its policy of transporting no oil other than its own—were the fundamental cause of the mischief at which the statute was directed.

II

There is no dispute that, if Valvoline is subject to the Act, the Commission had statutory authority under Section 19a (e) to enter the order here contested. The issue as to the validity of the order relates solely to its constitutionality.

Appellant argues that in deciding this issue the validity of the entire Act must be determined. It asserts that the order serves to change its status from that of a private to that of a common carrier, and thus can be supported only if Valvoline can constitutionally be required to assume the obligations of a common carrier under the Act. Moreover, it asserts that Section 19a (e) is inseparable from the principal regulatory provisions of the Act and that if those provisions fail Section 19a (e) must likewise fail.

We take issue with appellant on both propositions. The Commission's order does not change appellant's status at all; it simply recognizes appellant to be a pipe-line company subject to the Act.

It is the Act, not the order, which determines appellant's obligations. The Commission has taken no action with respect to Valvoline under any provision other than Section 19a (e) and may never be called upon to take such action. Appellant itself admits that it cannot now be predicted in what manner or how seriously it may be affected by the requirements of the Act. Under these circumstances, a decision on the constitutionality of the entire statute would be an advisory opinion upon a hypothetical state of facts. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324; *Electric Bond and Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419; *California* v. *Latimer,* 305 U. S. 255.

The question is not affected by the separability or inseparability of Section 19a (e). Whether that Section is separable in the sense that it could stand alone if the remainder of the Act were held invalid, need not now be determined; whether separable or not, the present exercise of authority under that Section cannot be invalidated on the ground that at some future time appellant's rights may be invaded in the administration of other sections of the Act. Appellant may contest the validity of only that provision which presently causes it injury. *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571; *Heald* v. *District of Columbia,* 259 U. S. 114; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.,* 226 U. S. 217.

Since Section 19a (e) is admittedly valid in its application to appellant, we believe that the decree below must necessarily be affirmed.

Affirmance is required even if it be held that appellant has standing in this proceeding to question the validity of sections of the Act not now affecting it. There can be no dispute that Valvoline is engaged in interstate commerce; that it transports its own oil over its own lines does not prevent that transportation from being interstate commerce or exempt it from federal regulation. *The Pipe Line Cases*, 234 U. S. 548; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601. Nor can there be doubt that the regulation imposed upon that commerce by the Pipe-Line Amendment does not constitute a violation of due process. In *The Pipe Line Cases, supra*, p. 561, this Court said: "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." See also *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125. Since Valvoline did not commence interstate transportation of oil by pipe line until after the effective date of the Pipe-Line Amendment, these decisions are decisive of its validity as applied to appellant.

Even apart from this consideration, no violation of due process is involved. The purpose of the statute—to free the channels of interstate oil transportation from abuses which had arisen

through common control of pipe line and refinery—is clearly within the Congressional competence, and the provisions of the Act as applied to apellant have a real and substatntial relation to that object.

ARGUMENT

Introductory Statement

Appellant presents the contentions in its brief that it is not subject to the provisions of the Interstate Commerce Act and that, if it is, the Act as applied to it is unconstitutional. We believe both contentions to be demonstrably unsound and that the decision below on the issues so posited is clearly correct.

Before proceeding to discuss these issues, however, a preliminary point of equity jurisdiction must be considered. In three recent decisions this Court has held that the expense of furnishing information of the type required of appellant by the Commission's order does not constitute such substantial and irreparable injury as to justify equitable relief.[3] *Petroleum Exploration, Inc.* v. *Public Service Commission,* 304 U. S. 209; *California* v. *Latimer,* 305 U. S. 255; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41. Since this

[3] The only allegation of the petition with respect to the expense of furnishing the information is that it would require the "expenditure of large sums of money" (Petition, Par. IX, R. 7), and the only direct testimony on the question is the statement of appellant's vice-president that "It would mean a terrific expense to gather this information" (R. 65).

expense is the only injury of which appellant may complain in the present case,[4] its suit should be dismissed if standing to maintain the suit depends upon the ordinary principles of equitable jurisdiction.

The question whether the ordinary prerequisites of equitable relief apply to a proceeding under the Urgent Deficiencies Act (38 Stat. 210, U. S. C., Title 28, Secs. 45, 47) to review an order of the Interstate Commerce Commission has never been determined by this Court. In several cases the Court has indicated that such a proceeding is equitable in nature. See *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 132; *United States* v. *Los Angeles R. R.*, 273 U. S. 299, 315. In the *Rochester Telephone* case the Court stated (p. 132)

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[4] There can be no contention that the mere existence of the statute (enacted in 1906) creates presently threatened irreparable injury. See *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Nor, as pointed out below, can it be maintained that the Commission's order serves to change appellant's status from that of a private to that of a common carrier and thus subjects it to irreparable injury from provisions of the Act other than Section 19a (e) under which the Commission's order was issued. The Commission has taken no action with respect to appellant under any other section, has made no order requiring a change in the company's mode of operation, and no demand or request for transportation service has ever been made upon the company. There is thus an entire want of any threat of injury, irreparable or otherwise, from the change in status which appellant erroneously claims the Commission ordered. *California* v. *Latimer*, 305 U. S. 255; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419.

that, where review is sought under the Urgent Deficiencies Act of an order of the Interstate Commerce Commission denying complainant's claim that is not within the statute, the complainant to secure relief must show "the conventional requisites of equity jurisdiction." Moreover, in *Alton R. Co.* v. *United States*, 287 U. S. 229, 240, Mr. Justice Brandeis, holding that the order there involved was reviewable under the Urgent Deficiencies Act, pointed out that "It subjects the Alton to damage which is substantial, immediate and irreparable." On the other hand, in several cases, this Court has reviewed orders of the Interstate Commerce Commission which seem to have involved no threat of irreparable damage, although the point of equitable jurisdiction was not raised or discussed. See, *e. g., Norfolk & Western Ry. Co.* v. *United States*, 287 U. S. 134; *The Pipe Line Cases*, 234 U. S. 548; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194. Moreover, in practice, petitions to review orders of the Interstate Commerce Commission under the Urgent Deficiencies Act have been treated as petitions as of right if only the order is final and the petitioner has a legal right or interest that will be injuriously affected by the order.

Because of this practice and because, in the opinion of the Interstate Commerce Commission, administrative convenience will be served by a review of the particular order which is here involved, the

Government does not urge affirmance of the decree upon the ground that appellant has not shown irreparable injury. Affirmance is in any event required on the merits.

I

VALVOLINE IS SUBJECT TO THE INTERSTATE COMMERCE ACT UNDER THE PROVISIONS OF SECTIONS 1 (1) (b) AND 1 (3)

That Valvoline is a common carrier within the definition of the Interstate Commerce Act is determined by the language of the statute itself and by the direct adjudication of the question by this Court in *The Pipe Line Cases,* 234 U. S. 548. And lingering doubt, if any there be, is effectively laid to rest by the legislative history of the statute.

The pertinent provisions of the Act follow (Sections 1 (1) (b) and 1 (3)):

> SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * *
>
> (b) The transportation of oil * * * by pipe line * * * from one state * * * of the United States * * * to any other state * * of the United States. * * *
>
> (3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire.

That Valvoline is a pipe-line company engaged in the interstate transportation of oil is not challenged.[5] Authorized by its charter to "engage in * * * any * * * transportation business of any kind or character whatsoever" (R. 83), it operates a connected system comprising 1,426 miles of pipe line, through which approximately 75,000 barrels of oil are transported each month hundreds of miles from points of origin to points of destination (R. 44, 55). Fifty percent of the oil so transported moves across state lines (R. 48).

The fact that Valvoline is a pipe-line company is determinative of the fact that it is a common carrier within the meaning of the Act; Section 1 (3) expressly directs that the term "common carrier * * * shall include all pipe-line companies."

Valvoline's contention is that the term "pipe-line companies" is modified by the clause "and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." The contention entirely overlooks the fact that the quoted phrase is not a modifying dependent clause but an independent clause in the conjunctive. Its plain intent is to bring within the

[5] It is significant that Valvoline pays a federal tax (R. 15) imposed upon "all transportation of crude petroleum and liquid products thereof by pipe line." Revenue Act of 1932, Sec. 73 (a), 47 Stat. 275. Prior to 1932, the tax was imposed upon all "transportation of oil by pipe line." Revenue Act of 1918, Sec. 500 (d), 40 Stat. 1103.

definition persons *in addition* to those specifically enumerated in the preceding part of the definition. The term "such transportation" refers to the "transportation" described in Section 1 (1) and (2); there is no mention of "transportation" in the preceding portion of Section 1 (3).

Valvoline's contention is precisely the argument which this Court rejected in *The Pipe Line Cases*, 234 U. S. 548. That case, like this, involved construction of Section 1 of the Interstate Commerce Act; the only distinguishing feature, and that adverse to appellant, is that at the time the decision was rendered the language of Section 1 gave superficial plausibility to the view that only common carriers, as that term is understood at common law, were included. The section at that time read in part as follows (34 Stat. 584):

> That the provisions of this Act shall apply to any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

This Court construed that provision to cover all pipe-line companies, whether operating as common carriers or not. It stated, 234 U. S. at 559, 560:

> The provisions of the act are to apply to any person engaged in the transportation of

> oil by means of pipe lines. The words who shall be considered and held to be common carriers within the meaning and purpose of this act obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but *an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.* [Italics supplied.]

There is no merit in Valvoline's argument that the Transportation Act of 1920 (41 Stat. 456) so revised the language of Section 1 as to narrow its scope; the section as it now stands is even more clearly applicable to Valvoline than it was prior to its revision. The purpose of the revision was obviously only simplification of language; there was no intent to reverse the legislative policy of more than a decade. The bill which became the Transportation Act of 1920 was reported to the House and Senate by their conferees with the following comment on the section embodying the revision:

> Section 400 amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important change in policy. [Report No. 546, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 2d Sess.].

Valvoline seeks to escape from the force of *The Pipe Line Cases* by urging that its operations are so different from those of the companies there involved that the decision is inapplicable to it. The contention disregards the decisive fact that this Court's decision was premised not so much on the operations of the particular pipe-line companies before the Court as upon the principle that the provisions of the Act "apply to any person engaged in the transportation of oil by means of pipe lines."

Beyond this, the contention is unsound because appellant's assertion that its operations differ from those of the companies involved in *The Pine Line Cases* is contrary to fact.* Two of the companies, the Prairie Oil & Gas Co. and the Ohio Oil Co., were engaged solely in transportation. The oil purchased by them at the wells or from connecting carriers was sold again at the end of their lines. They operated no refineries. In this respect their operations may be distinguished from Valvoline's. But the decision of the Court holding the Tidewater Pipe Company, Ltd., subject to the Act is directly in point, since in no essential respect

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*The facts as to the operations of the several companies are not stated in the majority opinion, but some reference is made thereto in the dissenting opinion of Mr. Justice McKenna (pp. 567–570) and they are briefly stated in the opinion of the Commerce Court, 204 Fed. 798, 802–803. In stating the facts of the case in the text of this brief we have had recourse not only to the opinion of the Commerce Court but also to the record in this Court, No. 508, Oct. Term, 1913.

did the business of Tidewater differ from that of Valvoline.

Tidewater's lines extended from points of origin in Illinois, Pennsylvania, and New York to its refinery at Bayonne, New Jersey. It never operated as a carrier for hire, and carried only its own oil for the use of its own refinery. It possessed no right of eminent domain; all of its lines were built upon private rights-of-way or on purchased land. Like Valvoline, Tidewater's refinery was designed to refine only certain grades of oil. Its pipe lines extended only to those fields which produced sweet or nonsulphurous oil suitable for its refinery, and it contended that if its lines were used to transport sour or sulphurous oil as well, the sweet oil would be contaminated and the company subjected to irreparable loss.

In two respects Tidewater's claim for exemption as a purely private line was stronger than the claim advanced by Valvoline. Unlike Valvoline, it did not purchase all of its oil from the public, but was itself the owner of large producing acreage in Pennsylvania and Illinois, and, unlike Valvoline, it did not sell any oil transported by it to other refineries. Its own refinery consumed the entire capacity of its lines.

The actual operation of Tidewater's lines differed from Valvoline's operation in only two respects, neither of which is determinative: (1) the

volume of oil transported was much greater, but the language of the statute clearly does not tolerate any limitation of degree; and (2) Tidewater's lines were connected with other pipe-line systems, but the oil so received was purchased at the connection points and transported over Tidewater's lines to its refinery as its own oil. The only effect of its connection with other pipe-line systems, therefore, was to afford a market to a greater number of producers than would otherwise have been the case.[7]

The essential feature of Tidewater's operation, which this Court held determinative of its status under the statute, was that it afforded a market to the producing public and was, in the words of the Court (p. 559), carrying "a great subject of international commerce coming from many owners but * * * carrying it all as its own." Valvo-

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[7] It cannot be contended that Tidewater was held subject to the Act on the ground that it was part of the Standard Oil Company system and monopoly by reason of the fact that Standard Oil controlled 30% of the stock of the Tidewater refinery. In the anti-trust action which the Government brought against the Standard Oil Company and its subsidiaries to dissolve their monopoly, Tidewater was made a party defendant. The action was dismissed as to it at the conclusion of the evidence upon the finding of the trial court that Tidewater had not "been proved to be engaged in the operation of carrying out the combination" (Record, *United States* v. *Standard Oil Co.*, No. 398, Oct. Term, 1910, Vol. 17, p. 525). That decision was rendered four years prior to the decision in *The Pipe Line Cases*.

line is performing this identical function on a smaller scale.[8]

Valvoline relies upon that part of the decision in *The Pipe Line Cases* which held that the Uncle Sam Oil Company did not come within the terms of the Act. This Company operated a three-inch pipe line from its own oil wells near Bartlesville, Oklahoma, a distance of about 60 miles to its refinery at Cherrydale, Kansas. The company purchased no oil.[9] No other producer or member of the oil shipping public was directly or indirectly

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[8] Appellant cites the decision of the Supreme Court of Illinois in *Tidewater Pipe Co.* v. *Board of Review*, 311 Ill. 375, 143 N. E. 87, and a curious dictum in the opinion to the effect that Tidewater is not a "common carrier" under the Pipe-Line Amendment because it transports only its own oil over its own lines to its own refinery. Apparently, that court inadvertently overlooked the fact that this very company had been held subject to the Act by this Court in *The Pipe Line Cases*. The dictum was merely an incidental expression of opinion, not germane to the decision, the question at issue being whether oil purchased by the company in Illinois and stored for a long period of time prior to its movement out of the state, was taxable by Illinois. The court made it clear that its decision that the oil was taxable did not turn upon the status of the company as a private or common carrier.

[9] In its brief (p. 14) Valvoline states, "Whether the Uncle Sam Oil Company transported only oil which it produced or whether it also purchased oil is not clear." This statement is based upon the opinion of the Commerce Court and upon Mr. Justice McKenna's statement in his dissenting opinion (p. 573) that "The extent to which it [Uncle Sam Oil Company] purchases oil from producers, if it does so at all, does not appear from the record." But Mr. Justice

interested in its operation or relied upon it either as a transporter or purchaser of oil.

Mr. Justice Holmes, for the Court, said (p. 562):

> This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, *and that is all,* we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end.[10] [Italics supplied.]

Holmes, for the Court, said (p. 562) that the pipe-line was "used for the sole purpose of conducting oil from its own wells to its own refinery." This was the allegation of the company's original petition for an injunction and there is no evidence in the record to the contrary. Chief Justice White, concurring, said (p. 563): "It is shown beyond question that the company buys no oil * * *." Whatever the actual fact may have been, the Court based its decision upon this assumption.

[10] Chief Justice White was of the opinion that even this company's operations fell within the meaning of the Act (p. 562), but he concurred in the result since he believed that to apply the Act to this company, whose pipe-line operations were begun prior to the passage of the statute, would

The determining factor in the *Uncle Sam Oil Company* decision was not the common ownership of pipe line and refinery. Tidewater, the Standard Oil Company of New Jersey, and the Standard Oil Company of Louisiana were all held subject to the Act, although each of them simply transported its own oil over its own lines to its own refinery. The determining factor was that the Uncle Sam Oil Company did not purchase any oil from producers, had no substantial transportation system, and had no direct or indirect relation with the producing public."[11]

Valvoline cannot be exempted from the Act on similar grounds, since it affords a market in three States for 9,020 wells and 1,751 lease operators, representing 2,015 royalty owners. It has never refused to buy and admit into its lines oil that meets its specifications (R. 43). Whatever limitation the decision in *United States* v. *Uncle Sam Oil Co.* may be deemed to have put on the literal terms of the Act, appellant, as an interstate carrier transporting for hundreds of miles "a great subject of interna-

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deprive it of its property without just compensation in violation of the Fifth Amendment.

[11] In his dissenting opinion, Mr. Justice McKenna said (p. 573): "And I take it if the companies had not made purchases of oil or refused offers of oil, they would not be held subject to the act. Such is the situation of the Uncle Sam Company and the ground of decision in regard to that company. It is not held to be within the act. * * * It may be supposed that if it venture to make purchases of oil it will lose its immunity."

tional commerce coming from many owners" (234 U. S. at 559) does not fall within it.

We believe that the language of the statute itself and the decision of this Court in *The Pipe Line Cases* conclusively refute petitioner's claim of exemption. Under these circumstances we do not feel justified in laboring the argument by tracing here the legislative background of the Act. For the convenience of the Court, the statutory history is outlined in Appendix B, *infra*, pp. 53–57.

That history has striking application to the present case, for it reveals that the very two factors upon which Valvoline principally relies to exempt its operations from the Act—its common ownership and control of refinery and pipe line and its policy of transporting no oil other than its own—were the fundamental cause of the mischief at which the statute was directed. It was not the practices of common carriers or carriers of oil for hire which called forth the legislation, but rather the duress to which well owners and independent refiners were subjected by companies whose common control of pipe line and refinery gave them the economic power both to dictate the price of oil and to insist that all oil which they transported be sold to them before its transportation.

Today, despite enactment of the statute, many, if not most, of the pipe-line companies still carry

only their own oil to their own refineries.[12] If Valvoline is exempted from the Act because it operates in this manner, the present usefulness as well as the original purpose of the Act would in large measure be defeated. Every consideration of principle and authority repels the suggestion.

II

THE ORDER OF THE COMMISSION DOES NOT IMPAIR THE CONSTITUTIONAL RIGHTS OF APPELLANT

1. The only constitutional issue presented is the validity of Section 19a (e)

There is no dispute that if Valvoline is subject to the Act the Commission had statutory authority under Section 19a (e) to enter the order here contested. The issue as to the validity of the order relates solely to its constitutionality.

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[12] See Splawn, *Report on Oil-Pipe Lines*, H. R. 2196, 72nd Cong., 2d Sess. For purposes of this report pipe-line companies were classified as (1) large and medium-sized units integrated with the oil industry; (2) partially integrated and smaller integrated units of the oil industry (in which class Valvoline was included); and (3) independent pipe-line companies. Of the first group, operating 78 percent of the pipe-line mileage, over 60 percent of the companies reported that in 1931 they carried no oil other than their own in gathering lines and about 50 percent made a similar report on the use of their trunk lines. Of the second group, owning 3.5 percent of the pipe-line mileage, 8 out of 14 companies reported that in 1931 they carried no oil other than their own in their gathering lines and 2 out 5 no oil other than their own in their trunk lines. The third group, comprising independent pipe-line companies, of course carried nothing but "outside" oil.

Appellant argues that in determining this issue the validity of the entire Act, as applied to its operations, must be determined. It advances two reasons in support of this claim. First, it asserts that the order serves to change its status from that of a private to that of a common carrier and thus can be supported only if Valvoline can constitutionally be required to assume the obligations of a common carrier under the Act. Secondly, it asserts that Section 19a (e), under which the order was issued, is inseparable from the principal regulatory provisions of the Act and that if those provisions fail Section 19a (e) must likewise fail.

We take issue with appellant upon both propositions. The Commission's order does not change appellant's status at all; it simply recognizes that Valvoline is a pipe-line company subject to the express provisions of the Interstate Commerce Act, and, as such, is required to comply with Valuation Order No. 26. Appellant's status is determined by the Act, not by order of the Commission.

Moreover, even if the order could possibly be construed as changing appellant's status from that of a private to that of a common carrier, appellant would nonetheless have no standing to call into question the validity of any provision of the Act other than Section 19a (e). The Commission has taken no action with respect to Valvoline under any other section, has made no order requiring a change in the company's mode of operation, and, as appellant states in its brief (p. 11), no demand

or request for transportation service has ever been made upon the company. Indeed, appellant itself admits (Brief 30) that "it cannot be predicted * * * in what manner or how seriously" Valvoline may be affected by the requirements of the Act. Under these circumstances, a decision on the constitutionality of the entire statute would be an advisory opinion upon a hypothetical state of facts. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324; *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419; *California* v. *Latimer*, 305 U. S. 255.

In *California* v. *Latimer, supra*, it was held that a ruling by an administrative agency that a company is subject to the statute which the agency is engaged in administering does not of itself give the company standing to secure an injunction against enforcement of the statute. Specific action by the agency in relation to the company must be shown.

The *Electric Bond & Share* case is to the same effect. There the decree which this Court affirmed in effect required the defendant companies to register under the Public Utility Holding Company Act of 1935 and thus to change their status from nonregistered companies, not subject to regulation, to registered companies subject to control by the Securities and Exchange Commission. This Court held that, despite the change of status required by the decree, defendants had no standing to seek, by way of cross-bill, an injunction against enforce-

ment of provisions applicable to them as registered companies. The Court stated (p. 443):

> By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation. *Anniston Manufacturing Co. v. Davis* [301 U. S. 337].

See also *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, at 324.

The question is not affected by the separability or inseparability of Section 19a (e). Whether or not that section is separable in the sense that, if the remainder of the Act were held invalid, that section could be enforced alone, need not now be determined; whether separable or not, the present exercise of authority under that section cannot be invalidated on the ground that at some future time appellant's rights may be invaded in the administration of other sections of the Act.

The question of separability appears to be nicely balanced; although the primary purpose of the information furnished under the Section is to aid the Commission in rate regulation, it also serves as the basis of reports to Congress (Section 19a (d)) and as a means of regulating pipe-line companies

through the deterrent force of publicity. Cf. *Electric Bond and Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Moreover, the valuation made on the basis of this information may serve a multiplicity of useful purposes other than rate regulation. See Sharfman, *The Interstate Commerce Commission*, Vol. III–A, p. 116. It is significant that Section 19a (e) provides that, unless otherwise ordered by the Commission with the reasons therefor, the records and data of the Commission shall be open to examination by the public.

Even if Section 19a (e) is inseparable, however, an order issued pursuant to its provisions may not be attacked on the ground that other provisions of the Act are unconstitutional. This Court has many times reiterated the proposition that a legislative act is presumed to be constitutional until otherwise adjudged in an appropriate judicial controversy, and "that it only hears objections to the constitutionality of laws from those who are themselves affected by its alleged unconstitutionality in the feature complained of." *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Premier-Pabst Sales Co.* v. *Grosscup*, 298 U. S. 226; *Heald* v. *District of Columbia*, 259 U. S. 114; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217. It follows, therefore, that for purposes of the present controversy, the provisions of the Act other than Section 19a (e) must be presumed valid. If those other provisions had in fact been struck down in actual controversy, it might be necessary to determine

whether Section 19a (e) is too fragmentary to stand alone. But until such an occasion arises, the doctrine of separability cannot be invoked to defeat enforcement of the valid provision.

The proposition that appellant apparently espouses would make it the duty of a court to examine every provision of an allegedly inseparable statute in order to determine, not whether a particular provision sought to be enjoined is constitutional, but whether there are a sufficient number of other valid provisions to make worth while the enforcement of the valid provision in controversy. No such proposition has ever been recognized.

The present situation is closely analogous to that presented in *Heald* v. *District of Columbia,* 259 U. S. 114. That case involved an attack upon a statute, constitutional as applied to the complainants but alleged to be unconstitutional in its application to others. The complainants contended, just as does appellant here, that the statute was inseparable, and that if it was invalid in part it was void *in toto.* But this Court denied injunctive relief, holding that the complainants had no standing to attack the validity of parts of the statute which did not affect them in order to nullify the part which did affect them. See also *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571; *Yazoo & M. V. R. Co.* v. *Jackson Vinegar Co.,* 226 U. S. 217; *Hatch* v. *Reardon,* 204 U. S. 152; *Blackmer* v. *United States,* 284 U. S. 421. By parity of reasoning, the appellant here cannot contest the validity of sections of the Act not pres-

ently affecting it in order to nullify the particular section under which it has been ordered to furnish information.

2. Considered by itself, Section 19a (e) does not impair the constitutional rights of appellant

Since no contention is made that Section 19a (e), considered by itself, is invalid as applied to appellant, it may be assumed that its separate validity is admitted. The admission is indeed compelled since the decisions of this Court allow of no doubt that Congress may require a company engaged in interstate commerce to furnish an administrative agency with relevant information concerning its operations. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *Electric Bond & Share Co.* v. *Securities and Exchange Commission, supra.* The cases cited are conclusive that such regulation is neither beyond the commerce power of Congress nor violative of the requirements of due process. If, therefore, we are right in our view that appellant has no standing to contest the validity of any other regulatory provisions in order to nullify Section 19a (e), the decree below must necessarily be affirmed.

3. The principal regulatory provisions of the Act are constitutional as applied to the appellant

Affirmance of the decree is required irrespective of the standing of appellant, in the present proceeding, to question the validity of those sections of the Act which impose upon pipe-line companies

at least some of the obligations of a common carrier. *The Pipe Line Cases*, together with many other decisions of this Court, disclose that appellant's constitutional contentions are without substance.

The principal provisions which appellant attacks are those which require pipe-line companies, as a condition of engaging in the transportation of oil, to make their transportation facilities available to others "upon reasonable request" therefor (Section 1 (4)) and to charge "reasonable" rates for the use of their pipe lines by others (Section 1 (5)). Valvoline claims that if it is subjected to these provisions, it will be required to carry in its lines the ordinary pipe-line grade of crude oil in addition to the select grade of amber color oil which it now purchases and for which its refinery is designed. It asserts that large expenditures will be necessary to adapt its filtering, pumping, and other facilities to such operation.

It is obvious that appellant is conjuring up an entirely speculative injury on which to premise its constitutional argument. The actual fact is that Valvoline has never been requested to transport oil for anyone and that no producer or regulatory body has ever lodged a complaint against the company's present mode of operation. The Act does not automatically require Valvoline to change its operations. Valvoline may, in the first instance, file tariffs, rules, and regulations taking into account

the necessities of its own particular situation. And certainly it is fair to assume that if at some future time a request is made of Valvoline for the use of its transportation facilities, the Commission, in determining whether the request is reasonable, will give due weight to appellant's method of operation, its policy of receiving into its lines only a certain grade and color of oil, the capacity of its lines, the other facilities available, and appellant's need of oil for its own refinery. Indeed, one of appellant's own officers testified (R. 51) that "If we are treated as a common carrier, I don't believe that we will have very many receipts from transportation of other people's crude oil. Except in certain cases, the same company would necessarily continue to carry practically exclusively its own oil." It is against this factual background that appellant's arguments must be viewed.

That Valvoline, in the operation of its pipe lines, is engaged in interstate commerce is beyond dispute. The fact that it simply transports its own oil over its own lines does not prevent that transportation from being interstate commerce or exempt it from federal regulation. *The Pipe Line Cases*, 234 U. S. 548; *United States* v. *Hill*, 248 U. S. 420; *United States* v. *Simpson*, 252 U. S. 465; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601.[13] The only possible question, therefore, is

[13] Appellant cites *Pennsylvania R. R. Co.* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, as holding that transportation by a coal company of its own coal on its own

whether the regulation imposed upon that commerce by the statute constitutes a taking of appellant's property without due process of law.

Here again *The Pipe Line Cases* furnish the definitive answer. This Court there upheld the Act against the challenge that it deprives pipe-line companies of their property without due process of law and takes such property for public use without just compensation. The Court held that there was no taking of property whatever and that "The whole case is that the appellees if they carry must do it in a way that they do not like" (p. 561). Mr. Justice Holmes, speaking for the Court, added the following emphatic dictum which, in our view, completely disposes of appellant's argument (p. 561):

> So far as the statute contemplates future pipe lines and prescribes the conditions upon

---

barges down certain rivers in Pennsylvania and thence by rail over its own private tracks to Ohio was not "in commerce" (Brief 21). This interpretation of the decision is contradicted by the language of the opinion. Mr. Justice Cardozo stated (p. 174): "The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission." The Court construed the Act as applying to rail and water transportation only when conducted by common carriers. Therefore, it found that the transportation involved in that case was not subject to the Act.

which they may be established there can be no doubt that it is valid.

Valvoline did not lay any of its interstate pipe lines nor transport any oil by pipe line in interstate commerce until after August 28, 1906, the effective date of the pipe line amendment. By its own voluntary act, therefore, Valvoline subjected its property to the conditions of the statute and may not now be heard to say that enforcement of those conditions constitutes a violation of due process.

In *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125, this Court made significant use of the dictum of Mr. Justice Holmes, quoted above. In that case the action of a state in requiring a foreign corporation to operate its local private oil line as a common carrier was upheld on the ground that the state law, pursuant to which this action was taken, was in force when the corporation entered the state. The Court stated (p. 128):

> * * * the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. "By accepting the privilege it voluntarily consented to be bound by the conditions" attached to it (216 U. S. 56, 66), and, while enjoying the benefits of that privilege, it will not be

heard to complain that an order, plainly within the scope of statutes in effect when it entered the State, is unconstitutional. *A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the* Pipe Line Cases, *234 U. S. 548, 561, in a single sentence, saying: "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."* [Italics supplied.]

But even apart from the fact that appellant began the interstate transportation of oil by pipe line after the effective date of the Act, the provisions of the Act do not deprive it of its property without due process of law. The purpose of the statute—to free the channels of interstate oil transportation from abuses which had arisen through common control of pipe line and refinery—is clearly within the Congressional competence, and the provisions of the Act as applied to appellant have a real and substantial relation to that object.

In many situations the possession of a pipe line is a strategic factor of the utmost importance in the petroleum industry. As a practical matter, the oil producer may well be completely shut off from the market if he does not have a pipe-line outlet. Furthermore, if he has access to only one pipe line, the owner of that line has it within his power to refuse

to receive any oil except such as is sold to him before it enters the pipe line, and otherwise to dictate the terms and conditions on which the oil shall be transported. Refiners in many cases must have access to pipe-line connections if they are to compete on equal terms with other refiners who have such connections. In the absence of regulation, therefore, a refiner who owns a line may possess substantial economic power over a large number of producers and over other refiners who are his competitors.

Under these circumstances there can be no substantial doubt that Congress was competent to prevent the economic power inherent in pipe-line ownership from being abused. See *The Pipe Line Cases*, 234 U. S. 548. Valvoline does not deny this, but asserts that it is only the main trunk pipe lines of the country which have such economic power. It contends that its operation, which is comparatively small, is incapable of participating in any evil on a national scale and consequently that the provisions of the Act are arbitrary and unreasonable as applied to it.

The contention is directly contravened by *Brass* v. *Stoeser*, 153 U. S. 391. That case involved the constitutionality of a North Dakota statute regulating all grain elevators without any restriction as to size or geographical location. The complainant elevator company sought to distinguish the prior decisions of the Court in *Munn* v. *Illinois*, 94

U. S. 113, and *Budd* v. *New York*, 143 U. S. 517, which upheld similar statutes of Illinois and New York, on the ground that those laws were "intended to operate in great trade centres, where, on account of the business being localized in the hands of a few persons in close proximity to each other, great opportunities for combinations to raise and control elevating and storage charges are afforded, while the wide extent of the State of North Dakota and the small population of its country towns and villages * * * present no such opportunities" (153 U. S. at 402). The evidence showed that there were about 600 grain elevators along the line of the Great Northern Railroad in North Dakota, that the business was keenly competitive throughout the State, and that at the very station where defendant's elevator was located two others were operating. The Court found in these factual distinctions no reason for denying the legislative power, stating (p. 403):

> These arguments are disposed of, as we think, by the simple observation, already made, that the facts rehearsed are matters for those who make, not for those who interpret, the laws. When it is once admitted, as it is admitted here, that it is competent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size and in some circumstances, it follows that such power may be legally

> exerted over the same business when carried on in smaller cities and in other circumstances. • • •

See also *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201–202; *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 511–512, 514; *South Carolina State Highway Department* v. *Barnwell Bros., Inc.*, 303 U. S. 177, 190–191; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154.

Moreover, there is no foundation in the record for the belief that the application of the Act to appellant may not result in the public benefits contemplated by Congress. The record is clear that should Valvoline refuse to purchase the oil of a producer, that producer would, in all save a few instances, have no other access to the market. That Valvoline has not in the past chosen to discriminate or prefer does not militate against its potential power to do so. It claims that the price which it pays for oil is governed by the competitive market and that it exercises no control over the price, yet it pays a premium of five cents a barrel over the posted market price on all oil moved in interstate commerce because "it is worth more to us" (R. 45). Clearly it is in control of this premium price, and were it to refuse to carry and the producers could transport their oil only by other carriers, they would lose at least the premium which their product presumably deserves. Moreover, Valvoline controls the delivered price which it charges the two independent refineries it is now

serving, and should it decide to cut off their supply; they would be forced to buy the mixed grade of the common carrier lines. That these producers or refineries may never have cause to complain is not important. The validity of the statute depends upon its effect in situations that may reasonably be conceived.

It is immaterial that Valvoline, as a small independent refiner transporting oil for the use of its own refinery, cannot exercise monopolistic control over the production and marketing of oil on a nation-wide scale. The test of whether it can be subjected to regulation is not whether it presently enjoys a monopoly, is large in size, or has engaged in evil practices. As this Court stated in *Nebbia* v. *New York*, 291 U. S. 502, 534, "The touchstone of public interest in any business * * * clearly is not * * * the enjoyment of a monopoly." See also *Brass* v. *Stoeser*, 153 U. S. 391. The real question is whether the company falls in the general category of enterprises which Congress can regulate in order to achieve a legitimate purpose. In view of the history of the oil industry and of the evils which Congress sought to eliminate by enactment of the Statute, the constitutional propriety of including all pipe-line companies within the scope of the regulation, irrespective of questions of size or degree, is beyond question.

CONCLUSION

It is respectfully submitted that the decree of the court below dismissing the petition for want of equity should be affirmed.

ROBERT H. JACKSON,
Solicitor General.
THURMAN ARNOLD,
Assistant Attorney General.
HUGH B. COX,
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General.
THOMAS M. ROSS,
Assistant Chief Counsel,
Interstate Commerce Commission.
RICHARD H. DEMUTH,
Special Attorney.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission,
Of Counsel.

OCTOBER 1939.

APPENDIX A

The pertinent provisions of the Interstate Commerce Act (Feb. 4, 1887, c. 104, 24 Stat. 379, as amended U. S. C., Title 49, Secs. 1, 19a), are as follows:

SEC. 1. (1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such

transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivery, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid; or

(b) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this part except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, includ-

ing all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

* * * * * *

SEC. 19a (a). That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners, who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier sub-

ject to the provisions of this part in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

* * * * * *

(d) Such investigation shall be commenced within sixty days after approval of this part and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right-of-way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this part shall have the full force and effect of law. Unless otherwise ordered by the Commission, with

the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

* * * * * *

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the commission, such carrier, receiver, or trustee shall forfeit to the United States the sum of $500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section 16 of this part.

(l) The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

APPENDIX B

Legislative Background of the Pipe-Line Amendment

A rich source of material throwing light on the background of the Act is the voluminous record in the case of *Standard Oil Co.* v. *United States,* 221 U. S. 1.[1] That record reveals clearly that it was not the practices of *bona fide* common carriers or carriers for hire of oil by pipe line that gave rise to the existing evils, but rather the common control and ownership of pipe line and refinery and the policy pursued by pipe-line companies of transporting only oil produced by them or purchased by them at the wells from the producing public.

When *The Pipe Line Cases* were before the Commerce Court in 1912, it was stipulated that the testimony taken in the case of *Standard Oil Co.* v. *United States, supra,* should be considered by that court in determining the meaning of the Pipe-Line Amendment. That court, after a consideration of this record and the record before the Commission,

[1] While the evidence in the *Standard Oil Company* case was taken and the case decided a few years after the passage of the Pipe-Line Amendment, the record was directed at conditions existing during the preceding two decades and reveals the facts with which Congress was undoubtedly familiar when, in 1906, it debated and enacted the Pipe-Line Amendment.

observed (*Prairie Oil & Gas Co.* v. *United States*, 204 Fed. 798, 801):

> Some of these pipe lines, aggregating a large mileage, are admittedly subject to public regulation, because their owners are public-service corporations engaged in the business of common carriers; but many of them belong to private companies, which use them only in the conduct of their private business. The private lines in most instances are owned or controlled by the refineries to which they transport crude oil and which they exclusively serve.
>
> The construction of pipe lines, such as are owned by these petitioners, involves a large outlay of capital, and few producers of the crude article are able to provide themselves with such a facility for marketing their output. Consequently, and because the cost of railroad transportation is prohibitive, the great majority of oil producers find it to their interest to sell at the wells to the owners of pipe lines, and, as a practical matter, may have no other alternative. For this reason it comes to pass that these private pipe line companies transport not only the oil supplied by their own wells, but also the much greater amount purchased by them from other producers.

Pipe lines were not originally included in the "rate bill" introduced in the Fifty-ninth Congress (first session), and not until the bill had passed the House and was being debated in the Senate was the amendment offered. Senator Lodge, of Massachusetts, offered it on May 4, 1906 (40 Cong. Rec. 6561), shortly after the receipt by the Senate of a special message from the President transmitting a summary of the report of the Commissioner of the

Bureau of Corporations on the subject of the oil industry.

Immediately Senator Foraker, of Ohio, arose to state (40 Cong. Rec. 6361):

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you could compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit. * * *

Senator Nelson, of Minnesota, and Senator Lodge then replied:

> Mr. NELSON. In reference to the amendment suggested by the Senator from Ohio to the amendment of the Senator from Massachusetts, I desire to state that if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public." Practically the [original] amendment would be of no use at all. [Ibid. p. 6365.]
>
> * * * * *
>
> Mr. LODGE. Mr. President, the purpose of this amendment is to bring the transportation of oil and other commodities within the interstate-commerce law. Oil is one of the greatest articles of interstate commerce car-

ried in this country, and it is now absolutely outside and beyond any Government regulation whatsoever. * * * But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment. [*Ibid.*, p. 6365.]

* * * * *

Those well owners are absolutely at the mercy of the pipe lines. I have had cases brought to me, which in this fifteen-minute debate I cannot enlarge upon, where an independent refinery has been deprived of its supply of oil because it would not agree to the prices of the pipe lines. A small well owner is compelled to take the price that is offered by the controller of the trunk line. * * * The pipe-line companies buy the oil they use in their own refineries and owing to the fact that they buy the oil, if you put in the words "carry for the public," the pipe lines go right out from under this amendment, in my judgment. * * * There is no proposition * * * to push up the prices or push down the prices and make it impossible for a pipe line to operate. It is simply to give relief, if relief is sought, to those who find that they are not fairly treated, or think they are not fairly treated by the pipe lines, through which alone practically they can get their commodity to market. [*Ibid.*, pp. 6365–6366.]

During the course of the debate an attempt was made to amend the amendment so that it would apply only to carriers "for the public" or to "transportation for hire" or "for compensation"

(*Ibid.*, p. 7000), but it was unsuccessful. Senator Lodge vigorously opposed it, saying:

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment [40 Cong. Rec., p. 7000].

U. S. GOVERNMENT PRINTING OFFICE : 1938

SUPREME COURT OF THE UNITED STATES.

No. 25.—October Term, 1939.

Valvoline Oil Company, Appellant, vs. The United States of America and Interstate Commerce Commission.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[November 13, 1939.]

Mr. Justice Reed delivered the opinion of the Court.

The Valvoline Oil Company appeals[1] from the final decree of a three-judge district court for the Western District of Pennsylvania, under the Urgent Deficiencies Act,[2] dismissing a petition to enjoin and annul an order of the Interstate Commerce Commission. The order, requiring appellant to file with the Commission certain maps, charts and schedules of its pipe-line properties for use in valuing the properties under Section 19a of the Interstate Commerce Act, was made after a determination by the Commission that appellant was "engaged in the transportation of oil by pipe line in interstate commerce and that it is a common carrier subject to the provisions of the Interstate Commerce Act."

Through 1,426 miles of pipe line, running to 9,020 wells in Pennsylvania, West Virginia and Ohio, Valvoline gathers some 75,000 barrels of oil per month for its two refineries in Pennsylvania which manufacture the products distributed by Valvoline to the trade. All of this oil is purchased from producers at the well, 50 per cent originating in Pennsylvania, 38 per cent in West Virginia, and 12 per cent in Ohio. At the time of the final order of the Commission which it challenges here, Valvoline was selling surplus oil, not needed in its own operations, to a refinery in Pennsylvania and to another in West Virginia, but none of this came from out of the state of the refinery. Because, thus, it does not transport interstate other oil than that which it purchases at the well for its own use, Valvoline claims that it is not a common carrier of oil sub-

[1] Judicial Code § 238, 28 U. S. C. § 345.

[2] 38 Stat. 220, 28 U. S. C. §§ 47, 47a.

ject to the Interstate Commerce Act, or, should it be held to come within the terms of the statute, that the statute is unconstitutional as to it in that the provisions violate due process by taking the carrier's property for public use without compensation.

Appellant urges as reasons why it is not a common carrier within the provisions of the Interstate Commerce Act that its pipe lines are used primarily to transport oil to its own refineries, that it is not clothed with a public interest, that the oil flowing through its lines is not in commerce until after preparation for market, and that, since the purpose of Section 19a(a) and (e) of the Interstate Commerce Act in requiring valuation data is to furnish a basis for the establishment of traffic and rates, the report required is the first step in general regulation to which it is not subject. The pertinent provisions of the Act are set out in the margin.[3]

There is no controversy over whether appellant is an interstate pipe line company. Obviously it is. The contentions above are advanced to show it is not subject to the Act. Section 1(3) defines common carrier to include "all pipe-line companies." If this definition is not limited by the subsequent clause "engaged . . . as common carriers for hire," extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.

The practice of compelling producers to sell at the well before admitting their oil to the lines was widely used as a means of monopolizing the product before the Hepburn Amendment in 1906.[4]

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[3] Sec. 1. (1) The provisions of this chapter shall apply to common carriers engaged in—

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water

From one State . . . to any other State. . . .

(3) The term "common carrier" as used in this chapter shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire.

Sec. 19a. (a) The Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter. . . .

(e) Every common carrier subject to the provisions of this chapter shall furnish to the Commission or its agents from time to time as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier. . . .

[4] 34 Stat. 584; see 40 Cong. Rec. 6365-66; Pipe Line Cases, 234 U. S. 548, 559.

Whether the oil so owned and transported was ultimately used by the carrier in its own operations or sold to others was in this connection immaterial. Certainly one would find a public interest in the sole means of transporting this commodity from thousands of wells for thousands of producers. This was covered by the *Pipe Line* decision. There it was stated that commerce is not dependent on title, "and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce." The applicable section of the Interstate Commerce Act at the time of the *Pipe Line Cases* read:

> That the provisions of this Act shall apply to any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act.

This Court construed that section to cover those who were common carriers in substance even if not in technical form and read it that those "engaged in the transportation of oil . . . by means of pipe lines" shall be treated as common carriers under the Act. The last clause was held not "to cut down the generality" of the Act.

In the present Act there is a change of language but we perceive none in meaning. Speaking of the amendments of the Transportation Act of 1920, which recast the Hepburn Amendment into the present form, the House Committee on Interstate and Foreign Commerce reported that the section here under consideration "amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important changes in policy."[5] As now written the section brings railroads under the Act by means of the last clause of subsection (3) only.[6] This clause is a conjunctive not a modifier. It does not affect the generality of the first clause as to pipe-line companies.

The appellant relies upon the *Pipe Lines Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the "sole purpose of conducting oil from its own wells

[5] Rep No. 456, Nov. 10, 1919, to accompany H. R. 10453, 66th Cong., 1st Sess.
[6] Cf. Pennsylvania R. R. v. P. U. Comm'n, 298 U. S. 170, 174.

to its own refinery." This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

Appellant presses its argument beyond the question whether it comes under the Act. If it does, it urges, the Act is in violation of the due process clause in that by the involuntary change of status from private to common carrier its property is taken. It looks upon the various regulatory provisions of the Interstate Commerce Act as inseparable from the valuation provisions of Section 19a(a) and (e). The losses feared, from present or future legislation other than the valuation provisions, may never occur. The data required by the present order may never be used to fix rates. No such information as to other pipe lines has been so used. Publicity alone may give effective remedy to abuses, if any there be.[7] This legislation was intended to free interstate commerce in oil from practices believed to be detrimental, and in that connection accessibility of valuation information to the Congress is essential. Its separate significance being apparent, we confine ourselves to Section 19a(a) and (e). The constitutionality of such requirements was settled by the *Pipe Line Cases* and we see nothing that excepts appellant from their effect. The smallness of the operation is immaterial.[8]

Affirmed.

Mr. Justice BUTLER took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[7] II Sharfman, The Interstate Commerce Commission 96.

[8] National Labor Relations Board v. Fainblatt, 306 U. S. 601, 606.